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5        appearing for Illinois Industrial  
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15       Managers Association;

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1		<u>I</u>	<u>N</u>	<u>D</u>	<u>E</u>	<u>X</u>	
2							
3	<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-</u> <u>direct</u>	<u>Re-</u> <u>cross</u>	<u>By</u> <u>Examiner</u>	
4	Peter Lazare						
5	Michael Brandt						
6	James Eber						
7	Paul Crimrine						
8	Christopher Thomas						
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1	<u>E X H I B I T S</u>	
2	<u>NUMBER</u>	<u>FOR IDENTIFICATION</u>
3	ComEd Nos.	
	1.0, 4.0, 4.1, 7.0, 7.1	
4	8.0, 8.1, 8.2, 13.0, 16.0	
	18.0, 19.0	52
5		
	Staff Nos. 1.0, 1.1,	
6	2.0, 2.1	53
7	ELPC Nos. 1.0, 1.1, 1.2	53
8	BOMA Nos. 1.0, 1.1-1.4, 2.0	
	2.1, 2.2, 3.0, 3.1, 3.2	55
9		
	NRCD No. 1.0	56
10		
	IIEC Nos. 1.0, 2.0, 2.1	57
11		
	AG Nos. 1.0, 1.1-1.10	58
12		
	Staff Nos. 3.0 and 3.1	
13		
	ComEd Nos. 2.0, 9.0, 14.0,	
14	5.0, 5.1, 5.2, 5.3, 11.0, 20.0	
15	CUB Nos. 1.0, 1.01-1.07	
16		
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18		
19		
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1                   (Whereupon, the following  
2                   proceedings were had in  
3                   Docket No. 07-0540.)

4           JUDGE SAINSOT:  And in 07-0540 there was a  
5   petition for leave to intervene filed by Blue Star  
6   Energy.  Is blue Star Energy here?

7                   (No response.)

8                   Is Blue Star on the phone?

9                   (No response.)

10                  I think I can pass that one.

11                  Anything else?  Any other routine  
12   matters?

13                   (No response.)

14                  No routine matters?  Okay.

15           JUDGE SAINSOT:  Going numerically, you're next,  
16   Mr. Pabian.

17           MR. JOHNSON:  Good morning, your Honor.  We  
18   will start with ComEd -- we would move for admission  
19   of ComEd's Exhibit 1.0, which is Commonwealth Edison  
20   Company's 2008 to 2010 Energy Efficiency and Demand  
21   Response Plan filed on November 15th, 2007, on  
22   e-Docket and verified by Mr. Brandt also on

1 November 15th, 2007. This document also includes  
2 appendices A through F.

3 MR. PABIAN: Your Honor, two copies to the  
4 court reporter and one to you, is that what you want?

5 JUDGE SAINSOT: How many copies do you have?

6 MR. LYON: We have three total.

7 JUDGE SAINSOT: Why don't we just do two copies  
8 and Judge Kimbrel and I can share. The court  
9 reporter has her hands full.

10 And that's just 1.0; right?

11 MR. JOHNSON: Correct. They're not all that  
12 have large, your Honor. The next exhibit ComEd moves  
13 for admission for is ComEd Exhibit 4.0, which the  
14 direct testimony of Martin G. Fruehe. This also  
15 includes ComEd Exhibit 4.1 to Mr. Fruehe's testimony  
16 and as well as ComEd Exhibit 16.0, which is the  
17 affidavit of Mr. Fruehe filed on e-Docket on

18 (Phone interruption.)

19 And then it is finally the affidavit  
20 of Mr. Fruehe filed on January 3rd verifying his  
21 direct testimony on the exhibit incorporated therein.

22 JUDGE SAINSOT: Is that 16.1 or just an

1 attachment to 16.0?

2 MR. JOHNSON: The affidavit is just a separate  
3 exhibit, ComEd Exhibit 16.0.

4 JUDGE SAINSOT: Oh that -- it's just that's it?

5 MR. JOHNSON: The affidavit is stand alone,  
6 right, and his direct testimony is ComEd Exhibit 4.0.

7 JUDGE SAINSOT: Okay. Got it.

8 MR. JOHNSON: ComEd next moves for the  
9 admission for the direct testimony of Frank  
10 Huntowski, which is ComEd Exhibit 8.0 It also  
11 includes Mr. Huntowski's attachments to his direct  
12 testimony, which is ComEd Exhibit 8.1, as well as  
13 ComEd Exhibit 8.2. It was filed on e-Docket  
14 November 15th, 2007. I would also move to admit the  
15 affidavit of Mr. Huntowski filed on January 3rd,  
16 2008, ComEd Exhibit 19.0.

17 Finally, ComEd would move to admit the  
18 direct testimony and rebuttal testimony of Nicholas  
19 P. Hall. The direct testimony filed on  
20 November 15th, 2008 is ComEd Exhibit 7.0, as well as  
21 ComEd's Exhibit 7.1, an attachment to Mr. Hall's  
22 direct testimony. We also move to admit Mr. Hall's



1     rebuttal testimony filed on December 21st, 2007 on  
2     e-Docket, it's ComEd Exhibit 13.0. There are no  
3     attachments to that testimony.

4                     And, finally, we move to admit the  
5     affidavit of Mr. Hall filed January 3rd, 2008, and  
6     it's ComEd Exhibit 18.0.

7             JUDGE SAINSOT: Is that the final exhibit?

8             MR. JOHNSON: I believe so, your Honor. Did I  
9     mention the rebuttal testimony is 13.0?

10            JUDGE SAINSOT: Mm-hmm.

11            MR. JOHNSON: I believe that's all we have.

12            JUDGE SAINSOT: Thank you.

13            MR. PABIAN: Just to clarify, we will be moving  
14     to admit DR responses that we talked about later but  
15     that's after we get them marked later on.

16            JUDGE SAINSOT: Okay. That will be on the  
17     break.

18            MR. PABIAN: Right.

19            JUDGE SAINSOT: So you all will be doing things  
20     on the break.

21                     Okay. Is there any objection to  
22     admission of ComEd Exhibits 1.0, 4.0, 4.1, 16.0, 8.0,

1       8.1, 8.2, 19.0, 7.0, 7.1, 13.0 or 18.0?

2                       (No response.)

3                       Okay. Hearing none, your motion is

4       granted, Counsel -- wait a minute.

5               MR. REDDICK: I had previously indicated there

6       would be a motion regarding Mr. Crumrine's testimony.

7               MR. PABIAN: This isn't Crumrine.

8               MR. JOHNSON: Correct. And Crumrine is not in

9       that stack of documents.

10              MR. REDDICK: Okay.

11              JUDGE SAINSOT: Any objection?

12                      (No response.)

13                      Your motion is granted, Counsel.

14                      (Whereupon, ComEd

15                      Exhibits Nos. 1.0, 4.0, 4.1, 7.0,

16                      7.1, 8.0, 8.1, 8.2, 13.0, 16.0

17                      18.0 and 19.0 were

18                      admitted into evidence as

19                      of this date.)

20              JUDGE SAINSOT: So now we're done with ComEd.

21       Who would like to go next?

22              MR. FEELEY: I'll go. For Staff -- the Staff

1 will move to admit into evidence the direct evidence  
2 of Richard J. Zuraski for identification as ICC Staff  
3 Exhibit 1.0 along with his attached affidavit,  
4 Exhibit 1.1. These were filed on e-Docket.

5 Staff would also move to admit the  
6 direct testimony of Bonita A. Pearce marked for  
7 identification as ICC Staff Exhibit 2.0 along with  
8 her affidavit marked for identification as  
9 Exhibit 2.1, this also was filed on e-Docket.

10 JUDGE SAINSOT: Any objection to have admission  
11 of Staff Exhibit 1.0, 1.1, 2.0 or 2.1?

12 (No response.)

13 Hearing none, your motion is granted.

14 (Whereupon, ICC Staff  
15 Exhibit Nos. 1.0, 1.1, 2.0 and 2  
16 were admitted into evidence as  
17 of this date.)

18 MR. KELTER: Your Honor, Environmental Law and  
19 Policy Center moves for admission of the testimony  
20 exhibits of Jeffrey C. Crandall marked as  
21 Environmental Law and Policy Exhibit 1.0, his  
22 background description marked as Exhibit 1.1, and the

1 study marked as Exhibit 1.2.

2 JUDGE SAINSOT: Any objection to admission of  
3 these three documents, ELPC Exhibits 1.0, 1.1 or 1.2?

4 (No response.)

5 Hearing none, your motion is granted.

6 (Whereupon, ELPC

7 Exhibit Nos. 1.0, 1.1 and 1.2

8 were admitted into evidence as

9 of this date.)

10 MR. MUNSON: Judge, on behalf of Building  
11 Owner's and Manager's Association of Chicago, I move  
12 for admission of the following exhibits into evidence  
13 in this proceeding: BOMA Chicago Exhibits 1.0, 1.1,  
14 and 1.2, 1.3 and 1.4 which is the direct testimony of  
15 Mr. Ralph Zarumba as exhibits which includes his  
16 affidavit in Exhibit 1.4; BOMA Chicago Exhibits 2.0,  
17 2.1, and 2.2 which is the direct testimony of  
18 Mr. Allan Skodowski, which includes his affidavit in  
19 Exhibit 2.2; and BOMA Chicago Exhibits 3.0, 3.1 and  
20 3.2, which is the direct testimony of Mr. Vincent  
21 Cushing, which includes his affidavit; and BOMA  
22 Chicago Exhibit 3.2.

1 JUDGE SAINSOT: Mr. Munson, could you go over  
2 with me what the Skodowski exhibits are again?

3 MR. MUNSON: Sure. Mr. Skodowski's exhibits  
4 2.0 consists of his direct, eight pages of direct  
5 testimony; Exhibit 2.1, is his biography, Exhibit 2.2  
6 is his affidavit.

7 JUDGE SAINSOT: Okay. I just got confused. Is  
8 there any objection to admission of BOMA Exhibits  
9 1.0, 1.1 through 1.4, 2.0, 2.1, 2.2, 3.0, 3.1, 3.2?

10 (No response.)

11 Okay. Hearing none, your motion is  
12 granted, Counsel.

13 (Whereupon, BOMA  
14 Exhibit Nos. 1.0, 1.1, 1.2, 1.3,  
15 1.4, 2.0, 2.1, 2.2, 3.0, 3.1, and  
16 3.2 were admitted evidence as  
17 of this date.)

18 JUDGE SAINSOT: And do we have copies of those?

19 MR. MUNSON: I'm getting them to you right this  
20 second.

21 JUDGE SAINSOT: Okay. You are getting it  
22 organized?

1           MR. MUNSON:   Yes.

2           MR. WETZLER:   Okay.   Behalf of the Natural  
3   Resources Defense Council, we'd move to admit NRDC  
4   Exhibit 1.0, the direct testimony of Henry Henderson,  
5   a copy is on its way.

6           JUDGE SAINSOT:   Any objection to admission of  
7   NRDC Exhibit 1.0?

8                         (No response.)

9                         Hearing none, your motion is granted,  
10   Counsel and I'll expect a copy some time today.

11                        (Whereupon, NRDC  
12                        Exhibit No. 1.0 was  
13                        admitted into evidence as  
14                        of this date.)

15          MR. REDDICK:   Conrad Reddick on behalf of IIEC,  
16   your Honor.   We move for the admission of IIEC  
17   Exhibit 1.0 corrected, which is the direct testimony  
18   of Robert R. Stevens in Docket 0540, along with  
19   appendix A showing his qualifications and his  
20   affidavit.   This was filed on e-Docket on  
21   December 31, 2007 transaction No. 212407.

22                        We also move the admission of IIEC

1 Exhibit 2.0 corrected, consisting of the direct  
2 testimony of David L. Stowe, 18 pages, along with  
3 appendix A showing his qualifications and an appendix  
4 B, which is marked as Exhibit 2.1 along with his  
5 affidavit. All of this material was filed on  
6 e-Docket December 31, 2007 transaction No. 212408 and  
7 copies will be forthcoming.

8 JUDGE SAINSOT: Any objection to admission of  
9 IIEC No. 1.0 or 2.0?

10 (No response.)

11 Hearing none, your motion is granted.

12 MR. REDDICK: And 2.1.

13 JUDGE SAINSOT: And 2.1, thank you.

14 (Whereupon, IIEC

15 Exhibit Nos. 1.0, 2.0 and 2.1

16 admitted into evidence as

17 of this date.)

18 JUDGE SAINSOT: Anybody else?

19 MS. HEDMAN: On behalf of the People of the

20 State of Illinois, the direct testimony of Philip

21 Mosenthal, which was filed on December 14th and it

22 accompanies Exhibits 1.1 through 1.10. The testimony

1 is identical to the testimony tendered in Docket  
2 07-0539. Would you like an additional copy?

3 JUDGE SAINSOT: Yes.

4 MS. HEDMAN: We'll provide that today.

5 JUDGE SAINSOT: Thank you.

6 MS. HEDMAN: And I should also add that we will  
7 be filing Mr. Mosenthal's affidavits on all three  
8 dockets on e-Docket later today.

9 JUDGE SAINSOT: For the record, this is AG  
10 Exhibit 1.0 and 1.1 through 1.9?

11 MS. HEDMAN: 1.0 through 1.10.

12 JUDGE SAINSOT: Okay. Thanks.

13 MS. HEDMAN: Thank you.

14 JUDGE SAINSOT: Any objection to admission of  
15 these documents into evidence?

16 (No response.)

17 Hearing none, your motion is granted,  
18 Counsel.

19 (Whereupon, AG  
20 Exhibit Nos. 1.0, 1.1 - 1.10 were  
21 admitted into evidence as  
22 of this date.)



1 JUDGE SAINSOT: Anything further in the ComEd  
2 docket?  
3 (No response.)  
4 We're all done with ComEd in terms of  
5 the routine things.  
6 JUDGE SAINSOT: Okay. So now we're moving on  
7 to the contested motions.  
8 Mr. Reddick, I believe you have  
9 something?  
10 MR. REDDICK: Yes, your Honor.  
11 JUDGE SAINSOT: This has to do with  
12 Mr. Crumrine, so that would be ComEd; is that right?  
13 MR. REDDICK: Correct. Your Honor, my motion  
14 is a motion to strike a portion of the testimony  
15 of -- rebuttal testimony of Mr. Crumrine, the ComEd  
16 witness. It relates to Page 5, Line 105 through  
17 Page 6, Line 129.  
18 JUDGE SAINSOT: And you are going to tender  
19 that to us so we can see exactly what that is?  
20 MR. REDDICK: I thought you just got a copy.  
21 JUDGE SAINSOT: No, I didn't get Mr. Crumrine's  
22 testimony.

1                   Page 5, what line?

2           MR. REDDICK:   Page 5, Line 105.

3           JUDGE SAINSOT:  Oh, yeah.

4           MR. REDDICK:  Through Page 6, Line 129.

5           JUDGE SAINSOT:  It says -- a block quote, the

6 statute --

7           MR. REDDICK:  Yes.  And the testimony

8 following.  Would you like a moment or should I

9 begin?

10          JUDGE SAINSOT:  You can begin.

11          MR. REDDICK:  In this portion of his testimony,

12 Mr. Crumrine starts with, as you noted, a quotation

13 of prefatory language in the new Section 12-103(a) of

14 the Public Utilities Act.  But what follows that

15 quotation is argument.  Mr. Crumrine's opinion on how

16 that language should be construed with respect to

17 policy purportedly stated in this section, the

18 purpose of the legislation, the relevance of certain

19 attributes of incurred planned costs to the

20 Commission's quasi judicial rate-making function and

21 the affect of this section's energy savings mandate

22 on cost responsibility to meet the requirements of

1 law -- that's a quote -- to meet the requirements of  
2 law.

3 Mr. Crumrine further concludes that as  
4 a result, presumably, of his legal analysis, the  
5 traditional class or group based distinctions used  
6 for rate-making, the purposes are meaningless as  
7 no customer is the cost-causer in the context of a  
8 mandatory energy efficiency and demand response  
9 program such as this one.

10 Mr. Crumrine's conclusions here  
11 represent legal opinions and these opinions purport  
12 to give restrictive substantive meaning to none  
13 substantive legislative expectations expressed in the  
14 section he quotes. The legal nature of  
15 Mr. Crumrine's response is affirmed by ComEd's  
16 response to a data request that IIEC sent to the  
17 company. Commonwealth Edison -- Commonwealth Edison  
18 objects to the request as requiring a legal  
19 conclusion. The company then provides a response  
20 that cites the challenged portion of Mr. Crumrine's  
21 testimony as its source.

22 With respect to legal opinions, the

1 law in Illinois is that statutory interpretation is  
2 not a matter to which an expert witness is competent  
3 to testify. This is true even if the witness is an  
4 attorney. In any case, Mr. Crumrine is not an  
5 attorney. Without Mr. Crumrine's objectionable  
6 discussion of legal matters regarding Section 12-103,  
7 the question posed on that page is answered by the  
8 factual assertions of the remaining testimony. So  
9 even without that testimony, the question is fully  
10 answered by the remaining text. This fact further  
11 supports the extraneous nature of the legal arguments  
12 that should be removed.

13 Accordingly, we ask that Lines 105  
14 through 129 of Mr. Crumrine's rebuttal testimony in  
15 Docket 07-0540 be stricken.

16 JUDGE SAINSOT: So 105 through 129 --

17 MR. REDDICK: 105 on Page 5 through 129 on  
18 Page 6.

19 JUDGE SAINSOT: Any response from ComEd?

20 MR. LYON: First, just to clarify, which of the  
21 data responses are you referring to?

22 MR. REDDICK: 2.5.

1           MR. JOHNSON: Your Honor.

2           JUDGE SAINSOT: Would you like to take a look  
3 at it?

4           MR. JOHNSON: Sure.

5           MR. REDDICK: Subsection H.

6           MR. JOHNSON: Your Honor, as this I mentioned,  
7 this is the first time we've seen, you know, the  
8 lines that they're proposing to object to here. So I  
9 guess our initial response on this would be to object  
10 to his motion; and Mr. Crumrine's testimony does  
11 involve the one charge that is proposed as part of  
12 the plan which is a -- you know, cost recovery is  
13 part of the plan and the elements of the plan and  
14 he's just explaining the basis for our one charge and  
15 how it can -- you know, is consistent with the  
16 requirements that the company must meet in their  
17 feeling. Obviously, it's the company and not the  
18 lawyers that have to comply with the plan. He's just  
19 explaining how we do.

20          JUDGE SAINSOT: Mr. Reddick?

21          MR. REDDICK: If this is -- if the basis of  
22 Mr. Crumrine's rate proposal is legal argument or a

1     legal position, that's something that can be done in  
2     brief, we certainly would not object. Mr. Crumrine  
3     said in his testimony that he was advised by counsel  
4     that this is the way he had to do it and attacked  
5     those arguments in brief; but to include his opinions  
6     on legal matters as factual testimony is  
7     inappropriate and should be stricken.

8             MR. FOSCO: Your Honor, may Staff also be  
9     heard?

10            JUDGE SAINSOT: Sure.

11            MR. FOSCO: Your Honor, I mean, in this docket,  
12     Staff will be responding based on the evidence of  
13     other parties, so the plan is being evaluated based  
14     not only on Staff's testimony but on what Staff  
15     intends to comment about about ComEd and we can't  
16     speak for Mr. Crumrine, he's not our witness, he's  
17     ComEd's. We did not view that section of testimony  
18     as offering a legal opinion as much as we viewed it  
19     as offering a policy comment from a rates perspective  
20     and we think it's impossible for expert witnesses in  
21     this docket to comment on a statutorily mandated plan  
22     for energy efficiency and demand response without

1 taking into account what the statute says. We don't  
2 think that terms the witnesses testimony,  
3 necessarily, into legal opinion testimony. As we  
4 view portions of the testimony that IIEC moves to  
5 strike, we consider it to be policy or rates  
6 testimony. Of course we can't speak for  
7 Mr. Crumrine. If he were our witness, we would make  
8 clear that it wasn't legal opinion. That's how Staff  
9 views it. Staff opposes the IIEC motion.

10 JUDGE SAINSOT: But Staff's position is very  
11 different about -- I mean, Staff --

12 MR. FOSCO: I mean, the issue here is rate  
13 design for recovery of the costs to be incurred under  
14 the Act. The Act sets forth requirements in terms of  
15 the goals that must be met by the plan and which must  
16 be met after the plan is implemented. It's subject  
17 to penalties. The plan also puts a firm 3 percent  
18 limit on all -- on all costs irrespective of class.

19 JUDGE SAINSOT: But Staff is a -- is in a very  
20 unique position about the law. Unlike just about any  
21 other entity here, Staff are sort of like the ICC  
22 police. It's their job to administer the Public

1     Utilities Act and it's perfectly acceptable for them  
2     to place in their testimony what they think the  
3     Public Utilities Act requires. That's different than  
4     Mr. Crumrine and, especially, a block quote in his  
5     testimony.

6             MR. FOSCO: And I guess what I'm focusing on  
7     is, your Honor, is more where he has opinions on  
8     whether it's meaningful from a rate design  
9     perspective. We think that's factual or policy based  
10    testimony of which we would rely in part in our  
11    briefs that are in the record and it's not legal  
12    opinion, I think that's a different argument we'll  
13    make in our briefs.

14            JUDGE SAINSOT: Well, I agree with you there.  
15    I think when -- on Line 119 when he talks about it is  
16    irrelevant from a rate-making perspective, et cetera,  
17    et cetera, et cetera that's not telling us what's  
18    contained in a statute or another law, so --

19            MR. FOSCO: Well, we were just offering our  
20    upon on motion, your Honor, for your consideration.

21            MR. REDDICK: In response, I note that the  
22    section of the Act that Mr. Crumrine quotes and



1 discusses is not -- essentially contains the  
2 limitations and prescriptions that Mr. Fosco referred  
3 to. We have not gone into that. What we're looking  
4 at here is a prefatory section that says it is the  
5 policy, blah, blah, blah, followed by a legislation  
6 expressed expectation where they say requiring  
7 certain things will have the following results. From  
8 that, Mr. Crumrine then goes on to concluded the  
9 meaninglessness or irrelevance of certain material or  
10 facts in a rate-making perspective. It's not a state  
11 statement that he deems these things irrelevant or  
12 immaterial from a rate-making perspective, per se.  
13 It's as a result of his legal analysis that he does  
14 so, so I think it is still objectionable.

15 JUDGE SAINSOT: You know, I don't know because  
16 the next line he says, The goals must be met  
17 regardless of the customer groups. Well, you always  
18 have to follow the law. That's not anything --  
19 that's not a legal opinion, really. I think what I'm  
20 going to do is grant your motion in part. I must  
21 say, Mr. Crumrine's sentence -- this Furthermore  
22 sentence that starts on 115 -- what is that a whole

1 paragraph? I'm going to allow it from Line 105  
2 through Line 120. The word "another," so that the  
3 sentence simply put blah, blah, blah is still there.  
4 Okay. And didn't you have something,  
5 Mr. Wetzler?  
6 MR. WETZLER: And this is a copy of the  
7 document we're talking about.  
8 JUDGE SAINSOT: Thank you. Go ahead, Andrew.  
9 MR. JOHNSON: Excuse me, Mr. Wetzler, could we  
10 also get a copy of that document?  
11 JUDGE SAINSOT: We can share.  
12 MR. WETZLER: NRDC is moving to admit what we  
13 have provisionally marked as NRDC Exhibit 2.0, which  
14 is a copy of a study, an EM&V Study.  
15 JUDGE SAINSOT: Just before you start, this is  
16 in the ComEd docket; right?  
17 MR. WETZLER: Right.  
18 JUDGE SAINSOT: I'm sorry, I didn't mean to  
19 throw you off.  
20 MR. WETZLER: As I say, it's a copy of EM&V  
21 Study sponsored by the California Public Utility  
22 Commission and produced by -- with the assistance of

1 all the investor owned utilities in California. It  
2 is publically on the State of California Public  
3 Utility's Web site. It is a study which is an impact  
4 evaluation of residential lighting measures which are  
5 very similar to the measures that ComEd has proposed  
6 here and it's a study of the impact of deem values  
7 which are identical to those that ComEd had proposed  
8 here. And, in fact, are derived from the same source  
9 of data.

10 We're filing this motion because ComEd  
11 has not consented to the introduction of this study,  
12 we use this study in our cross-examination of ComEd's  
13 witnesses through data requests in lieu of live  
14 cross-examination. Both of ComEd's witnesses said  
15 they were aware of the study. One of ComEd's  
16 witnesses acknowledged that this study may be used to  
17 alter DEER values, D-E-E-R, that is, as your Honor  
18 knows, one of the primary sources of ComEdison's NTG  
19 values in this case. This study is clearly relevant  
20 because it shows that ComEd may be significantly over  
21 claiming values in this matter according to this  
22 study, which was published in October of 2007.

1 Actual post anti-NTG ratios are only 60 -- are only  
2 at 60 percent whereas the values that ComEdison are  
3 proposing in this case are at 80 percent.

4                   So the document is clearly relevant.  
5 It was properly used during cross- -- during written  
6 cross-examination of ComEdison witnesses and it's  
7 clearly authentic. Under Illinois law, all this  
8 Court needs to satisfy itself is that NRDC has  
9 presented prima fascia evidence, that this document  
10 is what it appears to be. As I say, it's a  
11 publically available document. Anybody can download  
12 it. ComEdison, despite not printing out a copy and  
13 bringing it to the hearing today, has been aware of  
14 the existence of this document since at least a week  
15 ago. We've been in discussions with them about  
16 admission of this document. Their experts were aware  
17 of this document prior to that time and, so, we think  
18 there's been more than adequate foundation laid, the  
19 document is clearly authentic. It's clearly  
20 relevant. It was properly used in cross-examination  
21 and we think it should be admitted.

22               JUDGE SAINSOT: All right. Are you -- I'm a

1     little unclear as to why you are admitting this. Is  
2     this part of your case in chief? Is this a cross  
3     exhibit?

4             MR. WETZLER: It's a cross exhibit and it's a  
5     document that we tend to rely on in post trial brief.

6             JUDGE SAINSOT: And are you going to admit  
7     these data request responses?

8             MR. WETZLER: Yes, your Honor. We discussed  
9     this morning we would do that in a block after the  
10    live testimony so that the witnesses could start  
11    going home but our intention is, per a stipulation  
12    with Commonwealth Edison, to admit those data  
13    responses as well as some others.

14            JUDGE SAINSOT: And what's ComEd's problem with  
15    this document?

16            MR. JOHNSON: Your Honor, we have a number of  
17    different issues with the document and we object to  
18    pretty much everything that Mr. Wetzler has just  
19    said.

20                    Number one, we did negotiate yesterday  
21    about waiving cross and then agreeing not to object  
22    to the admission of data request responses. We,

1     however, did reject to the proposal that this Itron  
2     Report be admitted into evidence. Just to back up a  
3     little bit, we served data request responses on NRDC  
4     within a day of them having filed their direct  
5     testimony. Their testimony didn't mention anything  
6     about a deem or an Itron Report. They did not  
7     include this report in any of their work papers or  
8     replied upon documents.

9                     Mr. Wetzler is correct that they did  
10    serve a data request to us that mentioned this report  
11    in the queue of the request. Those requests, we did  
12    not consider to be cross-examination. I haven't  
13    heard that used here before at the commission that  
14    data requests are cross-examination. And, so we --  
15    to be dumped with all this last night at 11:00 p.m. I  
16    don't think is sufficient notice. It's not due  
17    process. He's making legal arguments. He filed an  
18    eight page brief that, you know, I didn't even read  
19    into this morning, so I don't think that's entirely  
20    fair.

21                    JUDGE SAINSOT: But you would agree with me  
22    that ComEd has some notice that NRDC intended or

1     could produce something regarding the Itron report?

2             MR. JOHNSON:  A part from the data request

3     response, which we set -- it was referenced and it

4     was a question to our experts which they responded to

5     subject to an objection that we made.  I think the

6     larger problem also we have is just that it's

7     hearsay.  It's being admitted to the for the truth of

8     the matter asserted and we have no one here to vouch

9     for the study or the methodologies used therein.

10    He's obviously already explained somewhat about the

11    values that are in the report.

12             JUDGE SAINSOT:  What documents -- what -- let

13    me rephrase that.  Did you propound data requests or

14    whatever asking NRDC what its theory was?

15             MR. JOHNSON:  NRDC just filed short direct

16    testimony and, so, we had just filed data requests in

17    response to that testimony.  None of which

18    involved --

19             JUDGE SAINSOT:  So you didn't ask him what

20    evidence he was going to put on at trial is that what

21    you're telling me?

22             MR. JOHNSON:  Our data requests were sent --

1 JUDGE SAINOT: These are requests or  
2 responses? I'm getting confused.

3 MR. LYON: We issued data requests based -- to  
4 NRDC based on their direct testimony, which did not  
5 mention this report or even of the deed that  
6 Mr. Wetzler referred to. The first time we heard  
7 about the report was in a data request that we  
8 received last Friday, the 28th, from NRDC. So we  
9 have not -- we didn't have a chance to reference the  
10 report, ask about the report in our data responses or  
11 our rebuttal testimony. We had no chance to respond  
12 to it until, you know, we received it in a request.

13 MR. PABIAN: Your Honor, NRDC did not indicate  
14 in its testimony any intent to rely upon this  
15 document or introduce it.

16 JUDGE SAINOT: Right. But you still have an  
17 affirmative duty to -- and it sounds -- I'm not  
18 questioning whether you did it -- to make sure that  
19 you understand what the other parties position is  
20 irrespective of any prefiled testimony. I'm not  
21 arguing that ComEd failed in that, it's just that I  
22 needed to kind of go through that in my mind. What



1 are these data request responses?

2 MR. WETZLER: Your Honor, the data requests  
3 themselves are reproduced in the brief and we will be  
4 submitting the responses, as I said, later today. In  
5 the responses, to summarize them quickly, both of  
6 ComEdison's experts said they were aware of the  
7 study. One of them said he was only aware of it  
8 generally. One of the experts, Mr. Hall, said that  
9 he felt that the study could, in fact, be used as one  
10 of the bases for changing DEER in the next year  
11 round. He then stated that he did not think that the  
12 study should be used as a basis of the Commission,  
13 which goes to the weight of the study. We have,  
14 obviously, no problem with ComEd arguing about the  
15 weight of the study. And at any rate, he said that  
16 he did not feel that the Commission should rely on  
17 the study to alter ComEd's proposed deem rates  
18 because, among other things, it was a single data  
19 point and market differences between California  
20 and --

21 JUDGE SAINOT: Well, then why don't you just  
22 cross-examine these witnesses about this report?

1           MR. WETZLER: Well we did, your Honor, as  
2   ComEd said, this morning in this very court. These  
3   data requests are being submitted in quote, in lieu  
4   of cross-examination. Mr. Pabian said it this  
5   morning. These data requests by stipulation are  
6   being submitted in lieu of cross-examination.

7           JUDGE SAINSOT: Well, I haven't seen the data  
8   request responses, so I'm not really comfortable  
9   saying for sure what they are or what they're not.  
10   But if you think this document is valuable to your  
11   case in chief, why don't you just ask the witnesses  
12   about it? Why are we going through the admission of  
13   this -- I mean, it just seems like you're making --  
14   you're making things difficult by waving cross --

15          MR. WETZLER: Well, your Honor --

16          JUDGE SAINSOT: -- for yourself.

17          MR. WETZLER: -- we did ask the witnesses about  
18   it through the data requests.

19          JUDGE SAINSOT: But the data requests may or  
20   may not be the same as cross-examination. Usually  
21   they're not.

22          MR. WETZLER: Your Honor --

1 JUDGE SAINCOT: I mean, I understand what  
2 you're saying it's being tendered in lieu of  
3 cross-examination, but frankly, those questions  
4 usually are not the kind of questions that lawyers  
5 ask on cross-examination, they are more general  
6 questions. I mean, I just don't understand why --  
7 you'd be better off waving cross and tendering this  
8 voluminous document as opposed to just  
9 cross-examining a witness.

10 MR. WETZLER: There's two points I'd like to  
11 respond to that the first is that even if we had  
12 crossed these witnesses live about this document, we  
13 still would have tendered the document because we  
14 would want to introduce the document so we could rely  
15 it.

16 JUDGE SAINCOT: Exactly. That's my point.

17 MR. WETZLER: Secondly -- the second point that  
18 I was going to make is is that I think from a legal  
19 point of view the question that you have to answer is  
20 whether or not there is sufficient evidence before  
21 you that the document is admissible. It's a clearly  
22 relevant document. It's clearly a document that we

1     intend to rely on.  It's clearly authentic, so I  
2     don't understand the basis for not allowing its  
3     admission.

4             MR. JOHNSON:  Your Honor, may I say something?

5             JUDGE SAINSOT:  Yes.  Please.

6             MR. JOHNSON:  I think what we're also trying to  
7     achieve here in this docket is a full and complete  
8     record and by coming in at the last minute with a  
9     single impact report -- I mean, if we want a full  
10    record on impact reports, then we should all be going  
11    back and doing a -- much more of a larger sampling of  
12    these impact reports.  To just put one in at this  
13    point, totally out of context, one report not --

14            JUDGE SAINSOT:  How would -- this -- where  
15    would the Commission know to look for something  
16    relevant in here?  I mean how would --

17            MR. WETZLER:  Because, your Honor, in our post  
18    trial briefs we will cite to specific pages of that  
19    report and --

20            JUDGE SAINSOT:  And but you could -- we could  
21    do the -- what's wrong with cross-examination?

22            MR. WETZLER:  As I said, your Honor, as far as

1 I'm concerned, we did cross-examine those witnesses  
2 through stipulated written -- what is essentially  
3 written stipulation to the parties --

4 JUDGE SAINSOT: All right. Let's --

5 MR. WETZLER: -- and may I add one final --

6 JUDGE SAINSOT: What witnesses are at issue  
7 here? What ComEd witnesses are at issue here?

8 MR. WETZLER: It's principally Mr. Hall.

9 JUDGE SAINSOT: And Hall, did you already admit  
10 him through the --

11 MR. JOHNSON: Correct.

12 JUDGE SAINSOT: -- so he's not here; right?

13 MR. JOHNSON: Correct.

14 MR. NICHOLAS HALL: I'm here by phone.

15 JUDGE SAINSOT: And in our hearts.

16 At this time I'm going to deny your  
17 motion, Counsel, but with these -- these words: One,  
18 I haven't seen the data requests responses, so you  
19 can renew it when I see the data request responses.  
20 And, two, you're not precluded from cross-examining a  
21 witness if that's where you want to go with that.  
22 So, I mean, I don't know what you've agreed to with

1 ComEd. I'm just saying that from my perspective,  
2 counsel for ComEd is not looking too pleased. I'm  
3 just saying that I don't -- you know, I wouldn't be  
4 adverse to just going that way depending on other  
5 circumstances that I don't know about.

6 MR. JOHNSON: Understood, your Honor. I mean,  
7 the agreement was, yeah, right, we would wave cross  
8 mutually and then not object to each other's data  
9 request responses coming in. So if there was going  
10 to be cross and data requests coming in, that's not  
11 our agreement, so we would have to talk about that.

12 JUDGE SAINSOT: All right. So you can bring up  
13 your motion again if you'd like.

14 MR. WETZLER: After you've seen the data  
15 requests?

16 JUDGE SAINSOT: Yes. Or after you've done  
17 whatever you can do to make counsel for ComEd happy  
18 and cross Mr. Hall.

19 Is there anything else of this nature,  
20 any evidentiary motions?

21 (No response.)

22 Now is a good time to take a

1 five-minute break.

2 (Recess taken.) JUDGE SAINSBOT: Okay.

3 So now we're switching to Docket No. 07-0540, which  
4 is the ComEd docket. I will note for the record that  
5 Mr. Jensen has been already sworn in.

6 I take it there is cross-examination?

7 Is there anybody else besides you?

8 MR. JOHNSON: We would like to get his  
9 testimony in. We have the affidavit. So we will  
10 move to have his direct and rebuttal put in.

11 So ComEd move then to have  
12 Mr. Jensen's corrected direct testimony admitted into  
13 the evidence as ComEd Exhibit 6.0 corrected, filed on  
14 November 15, 2007 on e-docket.

15 And along with his direct testimony is  
16 ComEd Exhibit 6.1. We also move to have that  
17 admitted into evidence.

18 Also move to have Mr. Jensen's  
19 rebuttal testimony, ComEd Exhibit 12.0 moved into  
20 evidence -- admit into evidence I'm sorry -- filed  
21 February 1, 2007 on e-docket.

22 Then finally the affidavit of

1 Mr. Jensen, which was filed on e-docket  
2 January 3, 2008 and is ComEd Exhibit 17.0.

3 With that, we would tender Mr. Jensen  
4 for cross-examination.

5 JUDGE SAINSOT: Any objection for admission  
6 into evidence of ComEd's Exhibit 6.0, 6.1, 12.0,  
7 17.0?

8 (No response.)

9 JUDGE SAINSOT: That being the case, your  
10 motion is granted, Counsel. Okay.

11 (Whereupon, ComEd's Exhibits  
12 6.0, 6.1, 12.0, 17.0 admitted  
13 into evidence.)

14 JUDGE SAINSOT: It's yours.

15 CROSS EXAMINATION

16 BY

17 MR. MUNSON:

18 Q Good morning. Mike Munson on behalf of the  
19 Building Owners and Manager's Association of Chicago.

20 Now, in your role as consultant in  
21 this matter for ComEd, would you agree the first  
22 thing you did was ask and acquire data from



1 Commonwealth Edison Company?

2 A One of the first things we did was to  
3 request of the company the data that they had  
4 available relevant to the work that we were going to  
5 be doing.

6 Q Okay. And as is typical in these sorts of  
7 studies you collected a lot of data in order to  
8 prepare building energy efficiency simulations  
9 verification processes and the like; is that correct?

10 A I'm not sure what you mean by "verification  
11 processes."

12 Q All right. You prepared building energy  
13 simulations to estimate energy savings; is that  
14 correct?

15 A Right.

16 Q And, similarly, ComEd provided you with  
17 data to prepare cost-effective analysis for demand  
18 response as well; is that correct?

19 A ComEd provided all of the data that we used  
20 for that analysis, yes.

21 Q And you would agree, would you not, that  
22 ComEd providing customers with usage data enables

1     them to better identify cost-effective capital and  
2     energy efficiency investments, would you?

3             MR. JOHNSON:   Your Honor, I would object to  
4     that question.

5             Mr. Jensen said that he was provided  
6     all data with respect to running that TRC test.

7             But this is outside the scope of his  
8     testimony as to the purposes of the demand response  
9     program or who it covers and what customer groups.

10            MR. MUNSON:   Can you rephrase the question. Or  
11     repeat the question for me.   I'm not sure I got it.

12            MR. MUNSON:   Let me try again.

13     BY MR. MUNSON:

14            Q     You would agree that ComEd, if they  
15     provided customers with their own usage data, would  
16     enable those customers to better identify  
17     cost-effective energy efficiency improvements, would  
18     you not?

19                         It's a question for you, not for your  
20     lawyer?

21            JUDGE SAINSOT:   All right.   Mr. Munson, that's  
22     a mouthful.   Can you make it more digestible for all

1 of us.

2 MR. MUNSON: The question?

3 JUDGE SAINSOT: Yeah, I need to understand it.

4 MR. KELTER: Excuse me. You can't consult with  
5 your lawyer like that.

6 I'm going to ask that he be directed  
7 not to speak with his attorney like that.

8 JUDGE SAINSOT: I missed it. But am I correct  
9 that he was -- that you were conferring.

10 MR. JOHNSON: I'm sorry, your Honor. He just  
11 asked if he was supposed to answer. He was confused  
12 as to whether he was going to rephrase the question  
13 or not.

14 JUDGE SAINSOT: Just so you know, Mr. Jensen,  
15 you can't confer.

16 Mr. Munson, will you try that question  
17 again? Make it easy to understand please.

18 MR. MUNSON: Let me try it a different way.

19 BY MR. MUNSON:

20 Q When providing customers with detailed  
21 usage data, enable those customers to achieve energy  
22 efficiency improvements?

1           A     I don't think the detailed data are  
2     required to make the improvement. I think a customer  
3     having information helps them make decisions about  
4     energy consumption.

5           Q     Are you aware of any programs where  
6     utilities have supplied customers with the real-time  
7     meter information?

8           A     Not specifically, no.

9           Q     You're not. Okay.

10                         Would you agree that the absence of  
11     energy information increases the cost or decreases  
12     the opportunities for a customer to achieve energy  
13     efficiency goals?

14          A     No.

15          Q     Do you know whether the level of spending  
16     on energy efficiency will match the collections of  
17     revenues from the surcharge by tariff class?

18           MR. JOHNSON: We would object to that question,  
19     your Honor, as just outside the scope of Mr. Jensen's  
20     testimony.

21           JUDGE SAINSOT: Did he talk about tariff  
22     classes at all?

1 MR. MUNSON: I can ask it to another witness.

2 JUDGE SAINSOT: So your motion is granted,  
3 Counsel.

4 MR. MUNSON: Nothing further.

5 JUDGE SAINSOT: I just have a few questions of  
6 Mr. Jensen.

7 EXAMINATION

8 BY

9 JUDGE SAINSOT:

10 Q Just for more of a clarification than  
11 anything else.

12 Staff witness, Ms. Pierce, testified  
13 essentially that the banking of excess costs  
14 shouldn't be allowed unless there are excesses over  
15 the statutory energy efficiency goals.

16 It's my understanding that she wanted  
17 both sides of the accounting equation to match up.

18 And maybe you are not the right  
19 witness?

20 A Unfortunately, probably not.

21 Q So nevermind.

22 You talked on Page 33 about performing

1 a risk analysis called the Monte Carlo analysis?

2 A Yes.

3 Q A very intriguing name.

4 Are risk analyses widely used for  
5 energy efficiency evaluation and that sort of thing?

6 A They are. I would not say they're widely  
7 used. They're increasingly being used by utilities  
8 as part of their portfolio planning process.

9 Q And you didn't really say what the Monte  
10 Carlo analysis is. Is it a type of risk analysis?

11 A It is.

12 In fairly simple terms, Monte Carlo  
13 analysis helps us understand the uncertainty that  
14 surrounds some assumptions we make about which we are  
15 not very certain.

16 So the technique simply -- are you  
17 familiar with statistics at all?

18 Q I try not to be, but..?

19 A Fair enough.

20 But the technique sets a distribution,  
21 a probability distribution, around a particular  
22 variable. And then the technique just samples from

1     that distribution when you run the analysis hundreds  
2     of times it samples at different points in that  
3     distribution, and comes up with the probability that  
4     your original estimate would be wrong.

5                     So it's just an efficient -- Monte  
6     Carlo is an efficient way for running lots of  
7     different scenarios to come up with an estimate of  
8     how uncertain your result would be.

9             Q     I'm a little curious because it seems to me  
10    that Ameren has an Energy Star Program. And am I  
11    right that ComEd has nothing in the way of an  
12    appliance -- a new appliance program?

13            A     Currently or in the plan?

14            Q     In the plan.

15            A     I think the intent, at least as we  
16    discussed this during the planning process, was to  
17    begin initially with a lighting program, an energy  
18    star lighting program, that would evolve into a  
19    broader appliance program.

20                     I think that one element of the  
21    Appliance Recycling Program that ComEd proposed  
22    includes rebates for Energy Star.

1           Q     Okay.     Here's kind of one of my  
2     pet-peeves, coupons.

3                     On Page 6 of your rebuttal you  
4     talk -- you said, I think, essentially, and correct  
5     me if I'm wrong, that the incremental savings  
6     associated with the new appliance programs are  
7     insubstantial.

8                     Actually, this doesn't have to do with  
9     the coupons.

10                    Am I right that you don't say what  
11     those incremental savings are?

12           A     They don't say what they are.

13           Q     The insubstantiality, I suppose.

14           A     The analysis that we supplied along with  
15     the plan includes an analysis of those.

16           Q     Here we go.

17                    On Page 6 of your rebuttal, again this  
18     is ComEd, you talk about upstream programs.

19                    Am I right that an upstream program is  
20     essentially a discount that a consumer would receive  
21     directly from a retailer or a wholesaler?

22           A     Yes, typically, the way the upstream



1     program works is that a utility will solicit bids  
2     from manufacturers, for example, for how much the  
3     manufacturer would bid down the price of their  
4     product.

5                     The utility would then provide the  
6     rebate essentially to the manufacturer. And then the  
7     price reduction flows all the way down through the  
8     chain to the customer.

9                     So the customer really doesn't see  
10    anything except a cheaper light bulb.

11            Q     On Page 6 of your corrected rebuttal, you  
12    talked about -- well, you stated essentially that the  
13    net verified savings associated with upstream  
14    programs can be more difficult to identify than the  
15    savings essentially from use of a coupon.

16                     Am I right that you don't really say  
17    what numbers are involved there?

18            A     That's true, because we don't know what the  
19    numbers are, and the problem is that with an upstream  
20    program as I just described, we don't really know who  
21    would have bought these light bulbs at the old price  
22    versus those that are buying them at the new price.

1 And that's the whole issue surrounding this net to  
2 gross.

3 So it's much more difficult to  
4 evaluate or determine what the net savings are.

5 If you have a coupon, then you have  
6 somebody's name on it or you know who physically  
7 turned that in, which gives you some more evidence to  
8 suggest that, perhaps, they would not have done this  
9 were it not for the coupon.

10 JUDGE SAINSOT: Thank you.

11 I have no further questions.

12 Any redirect?

13 MR. JOHNSON: No, your Honor.

14 JUDGE SAINSOT: Thank you, Mr. Jensen.

15 THE WITNESS: Thank you.

16 JUDGE SAINSOT: Mr. Munson, you are looking at  
17 me because?

18 MR. MUNSON: Waiting to see if you were going  
19 to break for lunch.

20 JUDGE SAINSOT: Oh, lunch.

21 (Laughter.)

22 We can talk about lunch. Is this a

1     good time?

2             MR. JOLLY:   My only concern is that Mr. Abolt  
3     is available until 2:00, so if we break for an hour,  
4     if he's the first witness after lunch, that's fine.

5             JUDGE SAINSOT:   Is there a lot of cross for  
6     Mr. Abolt?

7             MR. JOLLY:    20 minutes.

8             JUDGE SAINSOT:   I may have like two or three  
9     questions.

10            So what are you saying?

11            MR. JOLLY:    We can either cross, do Mr. Abolt's  
12     cross-examination now or first thing after lunch?

13            JUDGE SAINSOT:   I don't know. 25 minutes, I  
14     think we need to break now. We can get back here at  
15     quarter after 1:00.

16            Does that give us enough time for  
17     Mr. Abolt?

18            MR. JOHNSON:   Your Honor, I'm the only one that  
19     has cross. I think, I'll be shorter than the 20  
20     minutes that we had allotted.

21            JUDGE SAINSOT:   Okay. So quarter after 1:00.

22

1 (Whereupon, a lunch recess  
2 was taken.)  
3 JUDGE SAINSOT: Mr. Jolly, you were going to  
4 call Mr. Abolt?  
5 MR. JOLLY: Yes, the City calls William  
6 F. Abolt.  
7  
8 WILLIAM F. ABOLT,  
9 called as a witness herein, having been first duly  
10 sworn, was examined and testified as follows:  
11 DIRECT EXAMINATION  
12 BY  
13 MR. JOLLY:  
14 Q Would you state your name for the record.  
15 A William F. Abolt.  
16 Q By whom are you employed?  
17 A Shaw Environmental Reconstruction.  
18 Q In what capacity?  
19 A I'm a district manager for Shaw. In  
20 Chicago I run all three Illinois consulting offices.  
21 We focus on infrastructure, energy, and environmental  
22 consulting.

1                   I'm also a member of the  
2   sustainability national practice for Shaw.

3           JUDGE SAINSOT:   Mr. Jolly, should we swear him  
4   in first?

5           MR. JOLLY:   Oh. Laughter.

6           JUDGE SAINSOT:   Just so you're clear, this is  
7   the ComEd docket only.

8                               (Witness sworn.)

9           JUDGE SAINSOT:   Mr. Abolt, was your previous  
10   testimony the truth the whole truth and nothing but  
11   the truth?

12          THE WITNESS:   Yes, what I just said, yes.

13                       I can't vouch for lunch.

14          MR. JOLLY:   Sorry about that.

15          THE WITNESS:   Continue?

16          MR. JOLLY:   Yes.

17          THE WITNESS:   I'm   responsible -- a member of  
18   the national practice program and lead the design and  
19   development in energy components of that program.

20                       I additionally, manage specific  
21   consulting assignments focused on a range of  
22   activities for --

1 JUDGE SAINOT: You need to speak up,  
2 Mr. Abolt.

3 THE WITNESS: I also manage specific consulting  
4 assignments ranging from budget optimization  
5 infrastructure analyses, program evaluation, energy  
6 green-design activities.

7 I also serve as an instructor in  
8 public finance and budgeting at Northwestern  
9 University.

10 MR. JOLLY: Mr. Abolt, prepared the testimony as  
11 the judge mentioned in Docket 07-0540 the ComEd  
12 docket.

13 The City filed Mr. Abolt's testimony  
14 on December 14. We filed corrected direct testimony  
15 of Mr. Abolt on January 3, yesterday, 2008.

16 The corrected direct testimony made  
17 one change which appears at Page 7, Line 143. The  
18 number "1,075" was stricken from that line and the  
19 phrase "several thousand" was inserted.

20 With that, I would move for the  
21 admission of Mr. Abolt's direct testimony as City  
22 Exhibit 1.0.

1 JUDGE SAINSOT: Any objection?

2 MR. JOHNSON: No objection.

3 MR. JOLLY: The witness is available for  
4 cross-examination.

5 JUDGE SAINSOT: Hearing no objection, your  
6 motion is granted, Mr. Jolly.

7 And City Exhibit 1.0 is entered into  
8 evidence.

9 (Whereupon, City Exhibit No. 1.0  
10 was admitted into evidence.)

11 JUDGE SAINSOT: Cross?

12 MR. JOHNSON: Yes, it should be fairly short.

13 CROSS-EXAMINATION

14 BY

15 MR. JOHNSON:

16 Q Good afternoon, Mr. Abolt.

17 A Good afternoon.

18 Q My name is Mark Johnson and I'm counsel for  
19 Commonwealth Edison Company.

20 I have just a few questions for you  
21 this afternoon.

22 First directing you to your testimony

1 Page 3, Lines 64 and 65.

2 As an initial matter, you agree that  
3 ComEd has proposed a thorough and sound plan,  
4 correct?

5 A The sentence speaks for itself. But the  
6 conclusion was facing the tight time frame ComEd  
7 extended significant resources and remained  
8 successful and produced what was overall a thorough  
9 and sound plan.

10 Q In your direct testimony, you also comment  
11 that ComEd should leverage certain existing energy  
12 efficiency programs run by the City; is that correct?

13 A Could you show me the lines?

14 Q Sure.

15 A I just want to make sure you accurately  
16 characterize my testimony. I didn't memorize it.

17 Q It's just more of a general question. The  
18 words used in your testimony. Like, for example, the  
19 purpose of your testimony, you mentioned "ComEd could  
20 provide greater detail in its plans to leverage its  
21 proposed investments."

22 I'm just trying to get at what you are



1 meaning by the word "leverage" there?

2 A I did suggest that programs should be  
3 leveraged.

4 By "leveraged," I mean that ComEd  
5 should identify, and to the extent practical, use  
6 existing programs where resources can be shared in  
7 the overall costs through Commonwealth Edison's for  
8 implementing its programs to be reduced.

9 Q Turning to Page 6 of your direct testimony  
10 on lines, I believe, 115 to 118. And just to go  
11 ahead and quote this here, but you mention the plan  
12 and testimony submitted by DC0 provides a more  
13 specific identification of potential leveraging  
14 opportunities and suggested strategies to coordinate  
15 with existing programs, correct?

16 A Yes, that's what it says.

17 Q And in preparing your direct testimony,  
18 were you familiar with Section 12-103 of the Public  
19 Utilities Act?

20 A I didn't specifically read it. I don't have  
21 it memorized, no.

22 Q Okay. So you did not review it in

1 preparing your direct testimony?

2 A I did not review that specific section for  
3 purposes of this testimony, no.

4 Q Okay. And so it's safe to assume,  
5 Mr. Abolt, that you are unaware for example that DCEO  
6 is charged under the statute with implementing the  
7 programs for utilities of local government  
8 municipalities?

9 A No. I am aware of that.

10 Q Oh, you are aware of that?

11 A Yes. Perhaps, I haven't memorized every  
12 section. But have I read that Act. I read it.

13 I apologize for not having a specific  
14 section referenced blazoned in my mind.

15 Perhaps, you could just identify the  
16 section in layman's term so I could respond.

17 Q Sure.

18 Essentially, just the legislation  
19 that's requiring ComEd to implement its energy  
20 efficiency and demand response plans?

21 A Yes, I am familiar with the legislation and  
22 reviewed it, yes.

1           Q     And I think we already covered this  
2     question, but you said you weren't familiar with the  
3     fact that DCEO is charged with implementing programs  
4     for the City and municipalities units of local  
5     government, correct?

6           A     It's my understanding that DCEO or DCEO is  
7     responsible for procuring energy efficiency from  
8     units of local government to meet the requirements  
9     that are set down in the Act, and that's what they  
10    propose.

11          Q     Okay. And so back to your testimony and  
12    then the lines we had just discussed on 115 to 118.  
13    The fact that DCEO would provide for more specific  
14    identification of potential leveraging opportunities  
15    with existing programs, that's not surprising given  
16    that DCOs is charged with implementing programs for  
17    the City, correct?

18          A     I'm not sure I understand the point you are  
19    trying to make.

20                         Would I expect that DCEO would propose  
21    to leverage existing programs in its proposal? Yes.

22                         Would I expect Commonwealth Edison to

1     propose leverage to existing programs in its  
2     proposal?   The answer would be, yes.

3                     I would expect that not necessarily as  
4     a function of the local government set aside, but as  
5     a function of the program.

6             MR. JOHNSON:   Your Honor, I would ask for the  
7     latter part of that response to be stricken.   It was  
8     nonresponsive to my question.

9                     I just asked what DCEO was charged  
10    with implementing, and he went onto explain what  
11    ComEd should also do.   It's not being responsive to  
12    my question.

13            JUDGE SAINSOT:   Okay.   Your motion is granted.  
14    It's stricken.

15    BY MR. JOHNSON:

16            Q     Mr. Abolt, you then go onto provide some  
17    examples of the types of programs that ComEd could  
18    leverage, correct?

19            A     I provided examples of programs that we  
20    identified, yes.

21            Q     Okay.   And the first program, I believe, is  
22    discussed on Page 7 of your direct testimony

1 beginning on Line 132?

2 A Yes.

3 Q And it's called the City AG People's Gas  
4 Settlement Fund, correct?

5 A Yes.

6 Q Can you just describe that program for us.

7 A Sure. It's a program focused primarily on  
8 natural gas reductions funded by a settlement  
9 agreement between and their sources between the City  
10 and the Attorney General and Peoples Gas.

11 Q Okay. Again, this is the first example of  
12 the type of program that ComEd could leverage,  
13 correct?

14 A That's an example of a program that was  
15 identified, yes.

16 Q Okay. And on Line 139 of your direct  
17 testimony, it mentions that these programs are  
18 targeted at low- and moderate-income residents; is  
19 that correct?

20 A Yes.

21 Q Okay. And are you aware that under ComEd's  
22 plan that DCEO and the Department of Healthcare and

1     Family Services is charged with implementing programs  
2     for low-income customers?

3             A     Yes.

4             Q     Okay. And I guess my question would be  
5     then it would be appropriate, wouldn't it, for DCEO  
6     or DHFS to be implementing programs targeted at  
7     low-income customers and not ComEd, correct?

8             A     I wouldn't agree that it would be  
9     appropriate for Commonwealth Edison to think about  
10    programs that target residential customers for  
11    potential assistance.

12                    So I'm not sure I understand your  
13    question.

14                    But would I agree that DCEO has  
15    provided programs and targets low-income residents,  
16    yes.

17                    Would that preclude it from being  
18    reasonable for Commonwealth Edison to think about  
19    delivering mechanism for residential customers? No,  
20    I don't agree with your point.

21                    Perhaps, I don't understand your  
22    question.

1           MR. JOHNSON: Your Honor, I think that asks for  
2 a "yes" or "no" answer, so I move to have it  
3 stricken.

4           MR. JOLLY: I think Mr. Abolt stated that he  
5 wasn't certain what the question was. He answered it  
6 to the best of his ability.

7                     You know, generally speaking, in  
8 Commission proceedings, witnesses are permitted to  
9 explain their answers after providing a response.

10          JUDGE SAINSOT: That really was a "yes" or "no"  
11 question.

12          THE WITNESS: As I understand, it was two-part  
13 "yes" or "no" question.

14          JUDGE SAINSOT: In the future make your  
15 questions one part. And in the future when they're  
16 yes-or-no questions, limit that to "yes" or "no."

17                     However, if you don't understand the  
18 question, Mr. Abolt, just state you don't understand  
19 the question before trying to answer to something you  
20 don't understand.

21          THE WITNESS: Yes.

22          JUDGE SAINSOT: So your motion is granted,

1 Counsel.

2 MR. JOHNSON: Thank you, your Honor.

3 BY MR. JOHNSON:

4 Q Moving on, Mr. Abolt, to Lines 139 to 142  
5 of your direct testimony?

6 A Yes.

7 Q You state there: "Combining ComEd's energy  
8 efficiency funds for electric efficiency improvements  
9 in the City AG funds for gas-related improvements  
10 would increase overall energy efficiency and help  
11 ComEd meet its energy efficiency goals."

12 Do you have any other basis for why,  
13 in fact, combining these funds would, in fact,  
14 improve energy efficiency?

15 A Other basis other than what? I'm sorry.

16 Q Than just this statement right here.

17 A If you provide energy efficiency services,  
18 electric and natural gas, you increase energy  
19 efficiency to the extent that the City makes  
20 available to you means by which you can target and  
21 reach customers particularly to the extent that they  
22 bear the costs, a portion of the costs of providing



1     that access, they assist you in meeting -- they  
2     assist Commonwealth Edison in meeting its goals.

3                     That's the basis of my conclusion, as  
4     well as a review of the record.

5             Q     You had stated earlier that you are  
6     familiar with the energy efficiency legislation  
7     Section 12-103 correct?

8             A     Yes.

9             Q     And you're familiar with the Illinois Total  
10    Resource Cost Test; is that correct?

11            A     Yes, I am.

12            Q     And has an Illinois Total Resource Cost  
13    Test been run for the City, AG, Peoples Gas  
14    Settlement Fund?

15            A     Not that I'm aware of, no.

16            Q     Okay. And so there has been no Total  
17    Resource Cost Test that's been conducted for this  
18    example of leveraging that you propose where ComEd  
19    would combine its energy efficiency programs with the  
20    settlement fund, correct?

21            A     I'm not sure why it would be necessary in  
22    this instance, but, no.

1           Q     Given your familiarity with the statute,  
2     you are aware, though, that measures that ComEd  
3     proposes as part of its plan have to pass the Total  
4     Resource Cost Test?

5           A     I'm aware of the Total Resource Cost Test  
6     and the requirement as it applies to the Commonwealth  
7     Edison program.

8           Q     So you would agree then that if ComEd were  
9     to propose a leveraging situation like this, then you  
10    would have to, first of all, determine if it passes  
11    the Total Resource Cost Test?

12          A     That ultimately would need to pass a Total  
13    Resource Cost Test?

14          Q     Correct.

15          A     Generally, I would agree with that.

16          Q     Okay. But you have not conducted any of  
17    that analysis, correct?

18          A     I don't think it's necessary in this  
19    instance, no.

20          Q     Okay. The next program I wanted to turn  
21    your attention to is on Page 8 of your direct  
22    testimony, the Chicago Industrial Rebuild Program?

1           A     Yes.

2           Q     Can you first just explain the program.

3           A     It's a program in which the City conducts  
4     in which it identifies nonresidential customers that  
5     it seeks to target for energy assistance for purposes  
6     of reducing energy consumption.

7                     It primarily focuses on audits, energy  
8     audits, within those targeted businesses in a given  
9     year.

10          Q     And in particular here could you -- strike  
11     that.

12                     Could you just explain, I guess, what  
13     exactly you are proposing here that ComEd would  
14     leverage with the CIRP program?

15          A     The City in a process that it actually  
16     works with Commonwealth Edison identifies businesses  
17     and sectors that it believes could produce energy.

18                     By using resources of its own to reach  
19     out to those customers to secure their participation  
20     and to conduct energy audits to identify  
21     opportunities for energy reduction.

22                     The opportunity -- the opportunity for

1     leveraging is to use that existing infrastructure of  
2     identifying, recruiting, marketing the program to  
3     increase the penetration rate, the rate the customers  
4     make available to you, the program or the customers  
5     that Commonwealth -- or that the City of Chicago has  
6     invested its own resources to evaluate their energy  
7     consumption.

8           Q     Okay. And as part of this proposal, or I  
9     guess example that you set forth here, you don't  
10    propose how ComEd might fund these expansions that  
11    you propose here, correct?

12          A     I don't understand how you've characterized  
13    it as an expansion.

14                   What do you mean? Say it.

15                   Perhaps, it's something I said, but  
16    you are unclear in your question.

17          Q     I think it's on Line 162 of your direct  
18    testimony and 161, the start of the sentence: Build  
19    on the history of success and investments the City  
20    put into this program, the CRP could be expanded to  
21    reach more industrial customers.

22          A     It doesn't say Commonwealth Edison would be

1     expanded.  It says the City's program could be  
2     expanded.

3             Q     How would, I guess, that expansion occur?  
4     Is it the City doing that itself or is that due to  
5     the ComEd leveraging?

6             A     To the extent that the City decided to put  
7     additional resources into expand the program, it  
8     could expand that program or else Commonwealth Edison  
9     could use the existing program or the customers  
10    reached through them.

11                    It's not suggesting that Commonwealth  
12    Edison will necessarily expand its program.

13                    It says that the City has an existing  
14    program and existing network that identifies  
15    customers, it identifies energy savings, for example,  
16    that helps to fund audits, and that is a program that  
17    could be paired with Commonwealth Edison's intention  
18    to fund the measures --

19             JUDGE SAINSOT:  Hold on just a second.

20                             (Brief interruption.)

21             JUDGE SAINSOT:  I'm sorry.  Mr. Abolt, go on.

22             THE WITNESS:  It's an effective program that

1 the City has established to reach those targeted  
2 audiences or those targeted customers that  
3 Commonwealth Edison could use to identify customers  
4 that would essentially be leveraging or taking  
5 advantage of the City investment of its resource to  
6 identify those customers and that creates the  
7 potential to reduce some of Commonwealth Edison  
8 problematic costs that you have identified or that  
9 Commonwealth Edison has identified in its proposal.  
10 To the extent that that effort, the  
11 City's investment, produces problematic costs, which  
12 by definition reduced the cost elements that go into  
13 your equation.  
14 BY MR. JOHNSON:  
15 Q Okay. No Total Resource Cost Test has been  
16 run on this program, correct?  
17 A One is not necessary for the --  
18 Q Just answer the question please.  
19 A No.  
20 Q Finally, the last example you give is the  
21 Energy Efficiency Building Retrofit Program.  
22 Could you describe that for us.

1           A     It's a program that is being proposed in  
2     partnership between the City of Chicago and the  
3     Climate Initiative to focus on identifying buildings  
4     of different types and customer classes to promote  
5     energy audit and implementation of energy efficiency  
6     measures both to the benefit of the energy consumers  
7     and also to produce environmental benefits  
8     particularly the reduction in carbon emission.

9           Q     Again, no Total Resource Cost Test has been  
10    run on this program to determine if it's  
11    cost-effective, correct?

12          A     One's not necessary for the analysis that  
13    was conducted, no.

14          MR. JOHNSON: I have no further questions.

15                    Thank you, Mr. Abolt.

16          JUDGE SAINSOT: Mr. Munson?

17          MR. MUNSON: Thank you.

18                    CROSS-EXAMINATION

19                    BY

20                    MR. MUNSON:

21          Q     Mike Munson on behalf of the Building  
22    Owners Managers Association of Chicago.

1                   Referring to your testimony, Lines 2  
2   to 232 generally.

3                   Would you agree that large buildings  
4   that shift loads from high-cost periods to low-cost  
5   periods provide environmental benefits generally?

6           A     I would say that the potential for that  
7   exists.

8           Q     Would you agree that large buildings that  
9   reduce load or shift load from high-cost periods to  
10   low-cost periods benefits not only the buildings that  
11   shift load, but to other customers, as well?

12          A     The potential for that exists.  You'd have  
13   to do -- I think in both instances, you'd have to do  
14   a specific analysis, but the potential for that  
15   benefit exists.

16          Q     Do you agree that customers that have  
17   access to detailed usage information can better  
18   identify cost-effective efficiency investments?

19          A     Yes, I would agree with that.

20          Q     In your opinion, would providing customers  
21   with detailed usage data enable them to achieve  
22   energy efficiency opportunities without making other



1 investments?

2 A I'm not sure I understand what you mean by  
3 "not making other investments."

4 Q In other words, simply providing the data  
5 alone, can you achieve energy efficiency  
6 opportunities?

7 A Just by -- I'm not sure that you would do  
8 it by just providing the data alone, because it would  
9 require some action on the part of the customer on  
10 the data.

11 That action may be relatively low-cost  
12 action, but it would require some action and some  
13 action would require the expenditure of some resource  
14 even if it is a di minimus resource. Unless you act  
15 on information -- unless you act on information, it's  
16 not likely to result in a reduction.

17 MR. MUNSON: Nothing further.

18 JUDGE SAINSOT: Any redirect?

19 MR. JOLLY: Yeah.

20 JUDGE SAINSOT: For the record, I have no  
21 questions.

22

1 REDIRECT EXAMINATION

2 BY

3 MR. JOLLY:

4 Q Mr. Abolt, do you recall that Mr. Johnson

5 asked you some questions regarding the Peoples Gas

6 Settlement Fund Programs described, I believe, at

7 Page 6 of your testimony?

8 A Yes.

9 Q Or 7, actually?

10 A Yes.

11 Q And he also asked you whether ComEd should

12 be targeting low-income customers.

13 Do you recall that?

14 A I believe so, yes.

15 Q Is it true that --

16 MR. JOHNSON: Your Honor, I object. I don't

17 know that I said ComEd should be targeting low-income

18 customers. I thought it was DCEO.

19 MR. JOLLY: What I meant to ask is whether

20 ComEd should be targeting low-income customers.

21 THE WITNESS: Yes.

22 BY MR. JOLLY:

1           Q     Do you recall that question?

2           A     Yes.

3           Q     Is it true that the Peoples Gas Settlement

4     Fund also targets moderate-income customers?

5           A     Yes.

6           Q     Are you aware that ComEd's residential

7     programs also target moderate-income customers?

8           A     Targets residential customers, then DCEO

9     has a program that targets a specific subset of

10    residential customers.

11                     I'm not aware of any prohibition in

12    Commonwealth Edison's program from serving

13    residential customers based on income.

14                     Further, it's my understanding that

15    there is no prohibition against a residence, just

16    because it is a low-income residence, from

17    participation in a Commonwealth Edison program.

18                     For example, a residence of a

19    low-income program buying a subsidized compact

20    fluorescent at the local Home Depot, I'm not aware of

21    any specific restriction in the legislation that

22    prohibits it.  Nor am I aware of any specific

1 prohibition in other programs such as in the  
2 municipal subset aside that would limit the local  
3 government from subscribing to a commercial or  
4 industrial program in the Commonwealth Edison  
5 portfolio.

6 I'm aware of no such restriction in  
7 the legislation.

8 Q Mr. Johnson also asked you some questions  
9 about the Chicago Industrial Rebuild Program.

10 Do you recall that?

11 A Yes.

12 Q And you described that program; is that  
13 correct?

14 A Yes.

15 Q And is it true that as part of that  
16 program, Commonwealth Edison performs audits of  
17 selected facilities that the City identified?

18 A Yes, it performs audits of facilities, yes.

19 Q And what is the purpose of these audits?

20 A To identify energy efficiency reduction  
21 opportunities in part.

22 Q And with these identified potential energy

1     saving opportunities, who has to decide whether --  
2     who decides whether to invest in the identified  
3     measures?

4           A     The customer decides what to do with the  
5     results of the audit.

6           Q     Now, is it your understanding that  
7     Commonwealth Edison has what's called a Business  
8     Solutions Program?

9           A     Yes.

10          Q     Is that -- and what are the components of  
11     that program? What are the individual parts of that  
12     program?

13          A     I didn't memorize them, but they're a  
14     series of specific programs targeted at energy  
15     efficiency services under one large umbrella targeted  
16     at commercial or industrial -- or businesses,  
17     nonresidential customers.

18          Q     And are there some prescriptive programs?

19          A     Yes.

20          Q     And they're custom programs?

21          A     Yes, there are.

22          Q     Would it be possible for ComEd to use the

1 information garnered in the Chicago Industrial  
2 Rebuild Program to develop measures that could be  
3 included as part of this Chicago -- or its Business  
4 Solutions Program?

5           A     Yes, it would seem that for a very limited  
6 resources on ComEd's part that it could focus on  
7 targeted customers that the City is paying for audits  
8 and is making the effort to identify those customers,  
9 bring them to the table, secure their participation  
10 in audit, to promote its specific programs through  
11 that program. And that that would, in fact, likely  
12 reduce upfront costs that Commonwealth Edison would  
13 have in identifying customers, securing their  
14 willingness to participate and secure customer  
15 audits, and that that has the potential to reduce  
16 nonincentive costs for Commonwealth Edison, which if  
17 nonincentive costs were reduced for both Commonwealth  
18 Edison and the participant, being it the City of  
19 Chicago or some other party, has invested its money  
20 to pursue a complementary, not necessarily the same  
21 objective, as I understand the Total Resources Test  
22 has the potential to reduce the cost of the program.

1     If the same benefit is realized, it would then just  
2     increase the benefit-to-cost ratio.

3           Q     Is that an example of how you use the word  
4     "leveraging" in your testimony?

5           A     Yes, the standard leveraging exercise  
6     usually makes an effort -- a couple things.

7                     One of the first things that you do is  
8     you identify all programs or the universal programs  
9     that you believe have either the same or  
10    complementary objective to the program that is  
11    proposed.  You do analysis of those.

12                    And then the program that's being  
13    evaluated, in this instance what Commonwealth Edison  
14    proposed, would provide some detailed or  
15    disaggregated detail of how it intended to spend  
16    certain amounts of money.

17                    Once the programs are identified and  
18    the complementary objectives are identified, you  
19    would look to see which costs have the potential to  
20    be shared or what are the indirect costs.

21                    Then you would go through an  
22    item-by-item analysis as to whether those costs would

1 be reduced. You would look to see if entering any  
2 costs would be increased.

3                   The instance that we identify here,  
4 the Industrial Rebuild Program, it seems that there  
5 already has been an effort on the part of the City  
6 and Commonwealth Edison to target customers to secure  
7 their participation in an audit, which as I  
8 understand it, is a prerequisite in the participation  
9 in some of Commonwealth Edison efficiency programs.

10                   So it seems you have a complementary  
11 objective; you have a clear allocation at least  
12 proposed by City to achieve its objective. It's  
13 objective is consistent with, not identical to the  
14 objectives of Commonwealth Edison, and it has the  
15 potential to reduce some of the nonincentive costs  
16 associated with Commonwealth Edison's programs, which  
17 is why we suggested that there be a preference  
18 established that requires Commonwealth Edison to  
19 evaluate those types of programs, because there is no  
20 way to share a cost unless you identify and evaluate  
21 all the programs that should be leveraged, but it's  
22 not, by definition, which is a standard cost



1 allocation 100 percent of the cost will be born by  
2 the one program because no other programs have been  
3 identified with the potential for shared costs  
4 savings exist.

5 MR. JOHNSON: Your Honor, we would ask at this  
6 point that the scope of the redirect be appropriately  
7 narrowed to respond to the cross-examination.

8 This seems to be a lot of direct in  
9 kind of a speech, just being read into the record.

10 JUDGE SAINSOT: I'm not quite sure what you're  
11 asking?

12 MR. JOHNSON: I just request that the redirect  
13 be appropriately narrowed to the questions that were  
14 asked on cross.

15 MR. JOLLY: Unless that's an objection, I won't  
16 respond. But that's my final question.

17 JUDGE SAINSOT: Okay. In the future, I'm not  
18 sure the questions exceeded the scope, but the  
19 answers did. So in the future, if there is a future,  
20 please narrow your answers.

21 THE WITNESS: We're saving energy in the world,  
22 of course, there will be a future.

1 JUDGE SAINSOT: Is there any recross?

2 MR. JOHNSON: No, your Honor.

3 JUDGE SAINSOT: I just have one question about  
4 your testimony.

5 CROSS-EXAMINATION

6 BY

7 JUDGE SAINSOT:

8 Q I have to admit that I am just kind of  
9 fascinated by this Peoples Gas Settlement Fund for  
10 reasons that are immaterial.

11 But you talked about it being -- at  
12 first you said it was for low-income housing, I  
13 thought. Or at first you said it was for people that  
14 were 150 percent of the poverty line; is that  
15 correct?

16 A I didn't memorize the number. It's in our  
17 testimony and in the submitted documents.

18 MR. JOLLY: I think it was included in  
19 discovery response.

20 JUDGE SAINSOT: I think I just misread it  
21 actually, because it says what I'm reading is low and  
22 moderate. So okay. Nevermind. You're done.

1           THE WITNESS:  Thank you very much.

2           MR. JOLLY:  I move for the admission of City

3 Exhibit 2.0.

4           JUDGE SAINSOT:  What is this affidavit about?

5           MR. JOLLY:  For Mr. Abolt's testimony.

6           JUDGE SAINSOT:  I don't understand why you need

7 an affidavit for his testimony, if he just got sworn

8 in.

9           MR. JOLLY:  Okay.  That's fine.  I wasn't

10 certain of the procedure.  I didn't go through the

11 questions of "did he prepare this."  If you want, we

12 can do that real quick here.

13           JUDGE SAINSOT:  Yeah, why don't we just get it

14 over with.

15                               (Witness previously sworn.)

16                               WILLIAM F. ABOLT,

17 re-called as a witness herein, having been previously

18 duly sworn, was examined and testified as follows:

19                               FURTHER DIRECT EXAMINATION

20                               BY

21                               MR. JOLLY:

22           Q     Thank you.  Mr. Abolt, did you prepare for

1 submission in this case what has been entitled, The  
2 Corrected Direct Testimony of William F. Abolt?

3 A Yes.

4 Q Was this document prepared by you or at  
5 your direction?

6 A Yes.

7 Q If I were to ask you the questions  
8 contained in City Exhibit 1.0 Direct Testimony of  
9 William F. Abolt, would your answers be the same?

10 A Yes.

11 Q Do you have any additional corrections,  
12 changes, or modifications to this testimony at this  
13 time?

14 A No.

15 MR. JOLLY: And I already moved for the  
16 admission.

17 JUDGE SAINSOT: Nobody has a problem with this?

18 (No response.)

19 JUDGE SAINSOT: Thank you, Mr. Abolt. Now for  
20 sure you have no future.

21 (Laughter.)

22 MR. REDDICK: Your Honor, were our submission of

1     the papers in the record or not?

2             JUDGE SAINSOT:   These are things you were  
3     supposed to submit this morning, but were admitted on  
4     your promise that you would get them this afternoon?

5             MR. REDDICK:   Since it was conditional, I was  
6     not sure --

7             JUDGE SAINSOT:   The conditions have been met.

8             MR. REDDICK:   For IIEC.

9             JUDGE SAINSOT:   Whose next in the ComEd case?

10                 Don't all jump up at once.

11                 We're all done with ComEd?

12             MR. PABIAN:   No, are we doing it out of order  
13     for Mr. Abolt to get him in.

14             JUDGE SAINSOT:   We could get Mr. Lazare out of  
15     the way.   That would clear up a lot of audio  
16     problems.   Just kidding.

17                 Mr. Lazare, are you still on the  
18     phone?

19             MR. FOSCO:   He will be around.   He must have  
20     stepped out, but he will be around later.

21             JUDGE SAINSOT:   We have Mr. Crandall.

22             MR. KELTER:   There's no cross.

1 JUDGE SAINSOT: There's no cross for  
2 Mr. Crandall?  
3 MR. KELTER: Correct.  
4 JUDGE SAINSOT: You already submitted his  
5 testimony?  
6 MR. KELTER: Yes.  
7 JUDGE SAINSOT: Who's next?  
8 MR. JOHNSON: I believe it's Mr. Brandt, your  
9 Honor.  
10 Let go off the record for a minute.  
11 (Whereupon, a discussion was had  
12 off the record.)  
13 JUDGE SAINSOT: How long do you think?  
14 Mr. Kelter, how long do you think it would take for  
15 you to figure out if there would be damage done?  
16 MR. KELTER: I need to confer with my client.  
17 JUDGE SAINSOT: Your client is available by  
18 telephone?  
19 MR. KELTER: No, they're not.  
20 JUDGE SAINSOT: Here's my problem, I just don't  
21 want to get in the situation like we were with  
22 Mr. Voytas when we were talking about admitting new

1 evidence on a post-trial basis.

2 And is there anyway you can get this  
3 in order this afternoon or get yourself in better  
4 shape this afternoon?

5 MR. KELTER: Mr. Brandt submitted a significant  
6 amount of testimony, 72 pages total. And there are  
7 also other ComEd witnesses, and I'm not sure -- no, I  
8 can't do it this afternoon.

9 JUDGE SAINSOT: Well, all I can tell you is I  
10 don't know. I don't know the situation. You could  
11 file a written motion.

12 Should we start with Mr. Lazare, maybe  
13 that would be a little lighter.

14 Mr. Lazare?

15 THE WITNESS: Hello.

16 JUDGE SAINSOT: Hi, this is Judge Sainsot.

17 THE WITNESS: I'm having all kinds of problems  
18 with my telephone, it's working now though.

19 MR. FOSCO: I guess we could proceed with  
20 Mr. Lazare.

21 JUDGE SAINSOT: Right. Mr. Lazare, can you  
22 raise your right hand please.

1           THE WITNESS:   Yes.

2                               (Witness sworn.)

3           MR. FOSCO:   Your Honor, are we just proceeding  
4   in the ComEd document or should I admit both pieces  
5   of testimony?  I think the cross probably relates  
6   generally -- I don't know Mr. Reddick and Mr. Munson  
7   indicated they probably want to cross Mr. Lazare in  
8   both this would be part of the transcript in both  
9   documents?

10          JUDGE SAINSOT:  Both documents both ComEd and  
11   Ameren, not DCEO though.

12                       Why don't you go ahead.

13          MR. FOSCO:   Your Honor, in Docket 07-0539,  
14   Mr. Lazare filed direct testimony which was marked as  
15   ICC Staff Exhibit 3.0 and his affidavit in support  
16   thereof was ICC Staff Exhibit 3.1.

17                       This was filed on e-docket and I do  
18   have a copy today. And in Docket No. 07-0540, Mr.  
19   Lazare also prepared direct testimony in that docket  
20   which was identified as ICC Staff Exhibit 3.0, dated  
21   December 14, 2007.

22                       Mr. Lazare's affidavit in support of



1     that testimony is ICC Staff Exhibit 3.1. Both of  
2     these were filed on e-docket and I have a hard copy  
3     to tender to your Honor.

4                             (Whereupon, Staff Exhibit  
5                             Nos. 3.0 and 3.1 were admitted  
6                             into evidence in 07-0540.)JUDGE  
7                             SAINSOT: Okay. So now, we are  
8                             on 0540, ComEd.

9             MR. LYON: We just want to clarify, your Honor,  
10    with the parties that people are filing other  
11    parties' responses to them it, right? To their  
12    requests? Not their responses to other parties'  
13    requests, right.

14             JUDGE SAINSOT: Right.

15             MS. HEDMAN: Pursuant to an agreement with  
16    Commonwealth Edison, people submit AG Cross-Exhibit  
17    1.0 in this docket, which consists of five responses  
18    by Commonwealth Edison -- or excuse me three  
19    responses by Commonwealth Edison in this docket.

20                     And we are also submitting two  
21    responses by Val Jensen that were submitted in the  
22    Ameren docket, which we have also submitted in the

1 Ameren docket, so Ameren has already agreed to have  
2 them in the record in the other docket.

3 JUDGE SAINSOT: So run this by me again what  
4 the Ameren situation is? I'm getting kind of slow.

5 MS. HEDMAN: The first three responses or is it  
6 five responses. The first three data request  
7 responses are responses made by Commonwealth Edison  
8 to our data requests.

9 The final two are responses that Val  
10 Jensen made in the Ameren docket, and we are  
11 submitting them in this docket, as well pursuant to  
12 an agreement with Commonwealth Edison.

13 JUDGE SAINSOT: Got it.

14 MS. HEDMAN: They have already been agreed to  
15 in the Ameren docket with Ameren to be submitted in  
16 that docket.

17 JUDGE SAINSOT: Got it. So it's not anything  
18 that the court reporter has to worry about. So who  
19 else has something?

20 (Whereupon, AG Cross-Exhibit  
21 No. 1 was admitted into  
22 evidence.)

1 (Whereupon, the following  
2 Proceedings were had in  
3 Docket No. 07-0540.)

4 JUDGE SAINSOT: For the record, in 07-0540, ICC  
5 Staff Exhibit 3.1, which is -- Mr. Lazare's affidavit  
6 is also admitted.

7 (Whereupon, ICC Staff  
8 Exhibit No. 3.1 was  
9 admitted into evidence as  
10 of this date.)

11 JUDGE SAINSOT: Now we're moving to 07-0540.  
12 Is there any objection to admission of ICC Staff  
13 Exhibit 3.0, Mr. Lazare's direct?

14 (No response.)

15 Hearing none, your motion is granted.

16 (Whereupon, Staff  
17 Exhibit No. 3.0 was  
18 admitted into evidence as  
19 of this date.)

20 MR. FOSCO: Your Honor, we would tender  
21 Mr. Lazare for cross-examination.

22 PETER LAZARE,

1     called as a witness herein, having been first duly  
2     sworn, was examined and testified telephonically as  
3     follows:

4                     EXAMINATION

5                     BY

6                     MR. REDDICK:

7             Q     Mr. Lazare, Conrad Reddick, appearing for  
8     IIEC. Can you hear me?

9             A     Yes. Good afternoon.

10            Q     Good afternoon. If you would look first at  
11     your Ameren testimony, please.

12            A     Okay.

13            Q     At Line 116 and 117 there, you comment on  
14     the downward pressure on electricity prices in the  
15     central and southern Illinois market. Would you  
16     agree that electricity prices in the central and  
17     southern Illinois markets are largely a function of  
18     prices in the MISO wholesale market?

19            A     Yes.

20            Q     And with respect to the MISO wholesale  
21     market, would you expect, subject to check, that the  
22     MISO wholesale market delivered approximately 654

1 million megawatt hours of electricity in 2006 as  
2 shown on Page 10 of the MISO Annual Report for 2006?

3 A I have no way to confirm or deny that  
4 number.

5 Q Would you accept it, subject to check? I  
6 can provide you with the document if you were here or  
7 a Web site if you choose to look it up on line.

8 A Yes, I'll accept that.

9 Q Would you now turn to Lines 56 and 57 of  
10 your ComEd testimony?

11 A Okay.

12 Q And here you discuss the benefits that  
13 would accrue to customers and I want to ask you first  
14 whether you used the word "benefits" in the same way  
15 in both your Ameren and your ComEd testimony?

16 A Yes.

17 Q Is it accurate to say that the benefits you  
18 refer to are energy savings from the Energy  
19 Efficiency and Demand Response Programs, reduced  
20 electricity prices and environmental effects of  
21 reduced consumption?

22 A Yes.

1           Q     Again, staying with your ComEd testimony  
2     and I believe there's a corresponding statement in  
3     your Ameren testimony.  At Line 104 of your ComEd  
4     testimony you state, That the proposed programs will  
5     generate benefits for all customers.  Do we -- are  
6     you there?

7           A     Yes.

8           Q     You have not attempted to quantify each of  
9     those types of benefits; is that correct?

10          A     That's correct.

11          Q     And you haven't determined whether all  
12     customers will benefit equally; is that also correct?

13          A     That's correct.

14          Q     And you didn't determine whether all  
15     customers benefit equally because you didn't  
16     determine the distribution of benefits among  
17     customers or customer classes; is that correct?

18          A     That's correct.

19          Q     Is it also true that you have not estimated  
20     the effect of the Energy Efficiency and Demand  
21     Response Programs on energy prices in either the  
22     relevant ComEd or Ameren markets?

1           A     That's correct.

2           Q     And to your knowledge, no other party has  
3     quantified those benefits; correct?

4           A     That's correct.

5           Q     Let's go back to Lines 56 and 57 of your  
6     ComEd testimony. And there you discuss usage-related  
7     costs and I'd ask you the same question. Do you use  
8     that phrase "usage-related" in the same -- with the  
9     same meaning in both your Ameren and ComEd  
10    testimonies?

11          A     Yes, I do.

12          Q     By usage-related costs, you do not mean  
13    that the costs are caused by usage, do you?

14          A     I mean they're costs that are incurred to  
15    effect usage levels to reduce usage.

16          Q     Okay. And is it your understanding that as  
17    customer usage increases, the cost of Energy  
18    Efficiency or Demand Response Programs will increase  
19    as a direct result of increased usage?

20          A     No, I'm not arguing that.

21          Q     Okay. And is it your understanding, going  
22    in the opposite, that as customer usage decrease, the

1 cost of the programs will decrease as a direct  
2 result?

3 A No, I'm not saying that's directly tied.

4 Q Okay. So they don't go up, they don't go  
5 down. Can we agree that they're not directly  
6 affected by the level of customer usage?

7 A Specific costs, not -- I don't know that  
8 they're directly affected, no.

9 Q I'm sorry, I was -- I'm not sure what your  
10 answer was.

11 A I wouldn't say they're necessarily directly  
12 related.

13 Q Directly affected?

14 A Right.

15 Q Okay. You've reviewed the plans filed by  
16 the Ameren and ComEd utilities; correct?

17 A Yes.

18 Q And the costs of planned programs for  
19 particular customer classes are estimated as a part  
20 of those plans; is that correct?

21 A That's correct.

22 Q And do the costs of the programs for a



1 class change as the usage for that class changes?

2 A Not necessarily.

3 Q Could you go to your ComEd testimony at

4 Line 99? Would you agree with me that the proposed

5 plans of both Ameren and ComEd offer specific

6 programs based on a customer class or a customer

7 type?

8 A Yes.

9 Q Would you also agree that the estimated

10 costs of the programs for each customer class or type

11 are not the same for every one of those classes or

12 types?

13 A I would agree.

14 Q Would you also agree that the plans show

15 different expected energy savings for the different

16 classes?

17 A I would agree.

18 Q I'm sorry, I hit the microphone. I'm

19 locating a piece of your testimony. I'll be right

20 with you. I'm at Line 99 of your ComEd testimony.

21 A Yes.

22 Q And there you say, quote, While a uniformed

1 per kilowatt hour charge will not ensure that charges  
2 will match costs for all customer groups, it  
3 recognizes, in a reasonable manner, that expenditures  
4 are being made for all major customer groups. Is  
5 that correct?

6 A Yes.

7 Q And with that in mind, I'd like you to  
8 consider a hypothetical. Assume that a utility's  
9 plan programs for large commercial and industrial  
10 customers costs \$1,000 and that same plan has  
11 programs for residential customers that cost  
12 \$3 million. Would you consider a uniformed per  
13 kilowatt hour charge a reasonable way to recover  
14 those costs in those circumstances?

15 A I think I could say I wouldn't necessarily  
16 assume that a uniformed charge must apply in every  
17 circumstance and it's very possible, you know, you  
18 could present a hypothetical that would suggest that  
19 it would not apply.

20 Q Would it be fair to say that at some level  
21 of imbalances between costs and recovery, a uniformed  
22 charge might not be reasonable?

1           A     It would be a matter of looking at each  
2     individual proposal, each individual plan and making  
3     a decision accordingly.

4           Q     I understand. But at some level, a  
5     uniformed charge might not be reasonable?

6           A     That's possible.

7           MR. REDDICK: Nothing further.

8           JUDGE SAINSOT: Mr. Munson, you don't have  
9     anything?

10          MR. MUNSON: No cross.

11          JUDGE SAINSOT: Okay. Any redirect?

12          MR. FOSCO: No redirect, your Honor.

13          JUDGE SAINSOT: Okay. Mr. Lazare, thank you  
14     very much.

15                     Okay. Whose next?

16          MR. JOHNSON: Your Honor, according to the  
17     list, we have Mr. Brandt up next.

18          JUDGE SAINSOT: Is there any resolution of  
19     this?

20          MR. JOLLY: No.

21          JUDGE SAINSOT: Mr. Brandt?

22          MR. JOHNSON: Would you like to swear the

1 witness first or would you like me to go through  
2 the affidavit and testimony?

3 JUDGE SAINSOT: I don't know. It doesn't --  
4 I'll just swear him in.

5 (Witness sworn.)

6 MR. JOHNSON: ComEd moves for the admission  
7 of -- the first item is Mr. Brandt's direct  
8 testimony, which is ComEd Exhibit 2.0 dated  
9 November 15th, 2007, filed on e-Docket that same day.

10 Also, it moves to admit the rebuttal  
11 testimony of Mr. Brandt, ComEd Exhibit 9.0 dated  
12 December 21st, 2007, and filed on e-Docket that same  
13 day.

14 And, finally, the affidavit of  
15 Mr. Brandt filed January 3rd, 2008, on e-Docket and  
16 identified as ComEd Exhibit 14.0.

17 JUDGE SAINSOT: I'm sorry, what's the number  
18 for his rebuttal?

19 MR. JOHNSON: Rebuttal is ComEd Exhibit 9.0.

20 JUDGE SAINSOT: 9.0. Okay. Any objection to  
21 admission of ComEd Exhibit 2.0, 9.0 and 14.0?

22 (No response.)

1                   Hearing none, your motion is granted,  
2   Counsel.

3                   (Whereupon, ComEd  
4                   Exhibit Nos. 2.0, 9.0 and 14.0 was  
5                   admitted into evidence as  
6                   of this date.)

7           MR. JOHNSON:  And, your Honor, we would tender  
8   him for cross-examination.

9           JUDGE SAINSOT:  Okay.  Anybody have any cross  
10   for Mr. Brandt?

11          MR. JOLLY:  I do.

12                  MICHAEL BRANDT,  
13   called as a witness herein, having been first duly  
14   sworn, was examined and testified as follows:

15                  CROSS-EXAMINATION

16                  BY

17                  MR. JOLLY:

18           Q    Good afternoon, Mr. Brandt.  My name is Ron  
19   Jolly.  I'm an attorney for the City of Chicago.

20           A    Good afternoon.

21           Q    I'd like to start by asking you about your  
22   involvement in the development of the ComEd plan that

1 was admitted today as ComEd Exhibit 1.0. Were you  
2 intimately involved in the preparation of that plan?

3 A Yes, I was.

4 Q And you're familiar with it?

5 A Yes, I am.

6 Q And you -- and you agree with the  
7 statements and the text of the plan?

8 A Yes, I do.

9 Q Okay. Could you -- do you have a copy of  
10 the plan?

11 A Yes, I do.

12 Q I'd like you to turn to Page 11, if you  
13 could.

14 A Okay.

15 Q And, actually, if you could turn to the  
16 bottom of Page 10 and there's a heading there stating  
17 Implementing the plan. Do you see that?

18 A Yes.

19 Q And there's several bullet points we see  
20 after that. Do you see that as well?

21 A Correct.

22 Q And the first bullet point says, Experience

1     implementers?

2             JUDGE SAINSOT:  Is it possible that somebody --

3     could we have a copy of the exhibit?

4             MR. JOLLY:  Mr. Abolt took my copy,

5     unfortunately.

6             JUDGE SAINSOT:  Uh-huh.

7             MR. JOHNSON:  We entered it as ComEd Exhibit

8     1.0.  It's the first one, not the appendices.

9             JUDGE SAINSOT:  Okay.  What page are you on?

10    I'm sorry.

11            MR. JOLLY:  Bottom of Page 10 and then carrying

12    over to Page 11.

13            JUDGE SAINSOT:  You could start.

14    BY MR. JOLLY:

15            Q     In that bullet point that's entitled

16    Experienced Implementers it says that ComEd will use

17    experienced implementation contractors to manage

18    field implementation of those programs.  These

19    contractors, to be selected via competitive

20    solicitations, will have responsibility for

21    supporting ComEd's final detail program design and

22    development of detailed implementation programs -- or

1 plans, rather.

2                   Is one reason that ComEd will rely on  
3 experienced contractors is because they are familiar  
4 with or aware of potential -- potential participants  
5 in programs that ComEd seeks to implement as part of  
6 their programs in this case?

7           A     I'm sorry, could you just repeat that?

8           Q     I could try. Is one reason that ComEd will  
9 rely on experienced contractors is because they have  
10 access to persons who are likely to participate in  
11 programs that the Commission approves in this case?

12          A     You know, I think I'd have to say no, I  
13 don't think that's -- one of the reasons we're  
14 looking at experienced contractors is because they  
15 know how to run the programs. I don't know if they  
16 necessarily know how to -- know who the customers  
17 are.

18          Q     Okay. Well, going down to Page 11, the  
19 second bullet point in the second full paragraph on  
20 that page. You talk about leveraging existing  
21 program delivery structures. Could you tell me what  
22 you mean by that or what the plan means by that?



1           A     In terms of leveraging existing program  
2     delivery structures in our service territory, we'd be  
3     looking at any agencies or groups that run programs  
4     across the ComEd service territory that we could use  
5     to make our programs more cost effective.

6           Q     Okay. And, actually, going back up to the  
7     prior bullet point, the effective use of trade  
8     allies. Is it true that the residential and business  
9     solution programs will rely, to a great extent, on  
10    trade allies to bring customers to the programs?

11          A     It would be dependent on the program.

12          Q     Okay. Well, if you look at that bullet  
13    point on that page, does it, in fact, state that both  
14    residential and business solution programs will  
15    rely to a --

16          A     Right. At the residential business program  
17    level that would be correct.

18          Q     Okay. Could you turn to rebuttal  
19    testimony.

20                JUDGE SAINSOT: What page are you on?

21                MR. JOLLY: Hold on a second. It's Line 422.

22                JUDGE SAINSOT: And this is direct testimony?

1           MR. JOLLY:  No, the rebuttal.  It's Page 17.

2   BY MR. JOLLY:

3           Q     And in your answer beginning on Line 422,  
4   you respond to Mr. Abolt's suggestion that ComEd use  
5   existing delivery systems to leverage and im- -- to  
6   improve the cost effectiveness of its programs; is  
7   that right?

8           A     That's correct.

9           Q     And you state in your answer that the City  
10   has provided no evidence that any of ComEd's  
11   programs -- program costs also be reduced through  
12   leveraging of any of the City's current program  
13   offerings; is that right?

14          A     That's correct.

15          Q     And going back to the second bullet point  
16   on Page 11 of the plan where you discuss leveraging  
17   existing programs.  Will ComEd require that a party  
18   currently implementing an existing program  
19   demonstrate that any of ComEd's program costs will be  
20   reduced through leveraging the current offerings?

21          A     I think the party along with ComEd would  
22   have to determine that, that the cause would be

1 reduced.

2 Q And how would that process occur? Would  
3 ComEd reach out to entities that are currently  
4 implementing programs?

5 A That process has not been developed yet,  
6 how it would work.

7 Q Okay. So you don't know if it would be  
8 possible -- that it would be necessary for an entity  
9 that's currently implementing a program to come to  
10 ComEd?

11 A That could be one option but we just  
12 haven't developed the full process.

13 Q Okay. Now, as I indicated earlier, going  
14 back to your rebuttal testimony at Line 422 -- well,  
15 there you criticize Mr. Abolt's testimony for  
16 providing no evidence that the City's existing  
17 programs will reduce ComEd's cost; is that correct?

18 A I don't know if I'd characterize it as  
19 criticizing. I just pointed out that he provided no  
20 evidence that it would lower the cost.

21 Q Okay. But you haven't presented any  
22 evidence that the programs identified the City --

1 identified by the City and Mr. Abolt will not reduce  
2 ComEd's costs; is that right?

3 A That would be correct.

4 Q And at Line 429 of your rebuttal  
5 testimony --

6 A Yes.

7 Q -- you discuss -- you say, That one  
8 critical step in analyzing potential synergies will  
9 be the ability to measure and verify the kilowatt  
10 hour savings associated with activities. Again,  
11 ComEd bears the ultimate responsibility for achieving  
12 the statutory goals, so ComEd must be able to measure  
13 and verify the kwh savings from any other programs  
14 and the overall cost effectiveness; is that correct?

15 A Correct.

16 Q Do you understand, Mr. Abolt's  
17 recommendation regarding leveraging existing programs  
18 to mean that ComEd would implement the existing  
19 programs?

20 A Which existing programs are you talking  
21 about?

22 Q Well, just -- we can use the programs that

1 are identified in this testimony, for example, the  
2 Chicago Industrial Rebuilt Program.

3 A Then I -- no. My understanding of it is  
4 that the City would continue to implement the  
5 programs.

6 Q And what is your understanding of what  
7 Mr. Abolt means regarding leveraging programs?

8 A I guess my understanding would be that  
9 Mr. Abolt would like ComEd's -- the measures that are  
10 included in this -- on our programs or the ComEd  
11 programs to be included in the City programs.

12 Q To be included in what way?

13 A Offerings.

14 Q Okay. So, for example, perhaps ComEd could  
15 take advantage of information that the City has  
16 through implementation of its programs regarding  
17 potential customers or participants who may be likely  
18 to participate in a proposed ComEd program; is that  
19 correct?

20 A That would be correct.

21 Q Would you turn to Page -- I think it's 94  
22 of the plan and there -- there's a discussion of the

1 C&I New Construction Program; is that correct?

2 A Correct.

3 Q Are you familiar with that program?

4 A I am.

5 Q And in the program description, which is

6 at -- roughly a quarter of the way down the page, it

7 description the program as including -- educating

8 building owners, design professionals, et cetera, and

9 supporting -- providing support for the leadership

10 and energy and environmental design lead rating

11 system. Are you fam- -- did I -- is that an accurate

12 statement regarding the proposed -- the program

13 there?

14 A That's correct.

15 Q Okay. Are you familiar with the City's --

16 Chicago Green Building Initiative?

17 A Only slightly.

18 Q And to the extent you are familiar with it,

19 do you -- could you describe it?

20 A Other than the City is pushing to get as

21 many -- I guess, you know, buildings green as

22 possible but I don't know the details about the

1 program.

2 Q Okay. So you don't know if the persons who  
3 participate or the buildings where the business  
4 owners who participate in the City's program might be  
5 likely participants who would participate in  
6 ComEd's -- the program described on Page 94 there?

7 A I don't.

8 Q You don't know?

9 A I don't.

10 Q Turn to page -- if you could, turn to  
11 Page 15 of your rebuttal testimony, and specifically,  
12 at Line 369 beginning there. You state that  
13 Mr. Abolt -- with respect to the proposals made by  
14 Mr. Abolt and BOMA Witness Zarumba, to the extent  
15 they request ComEd provide real time energy usage  
16 information free or at minimal costs, it's not  
17 possible or practical at this time. Did Mr. Abolt in  
18 his direct testimony recommend that ComEd provide  
19 meters that provide real time energy usage data?

20 A I would have to review his testimony again.  
21 I don't know offhand.

22 Q Okay. But when you wrote your testimony,

1       that was your assumption?

2           A     Obviously I though he did at the time, yes.

3           MR. JOLLY:   That's all I have.

4           JUDGE SAINSOT:   Mr. Kelter?

5           MR. KELTER:   Nothing.

6           MR. MUNSON:   I think BOMA has a question.

7           MR. JOHNSON:   Your Honor, would you like brief

8       redirect now or at the end?

9           JUDGE SAINSOT:   At the end, I would think.

10          MR. MUNSON:   Briefly, your Honor.

11                        CROSS-EXAMINATION

12                        BY

13          MR. MUNSON:

14          Q     Good afternoon, Mr. Brandt.

15          A     Good afternoon.

16          Q     Mike Munson from the Building Owner's and

17       Manager's Association of Chicago.

18                        You would agree, wouldn't you,

19       Mr. Brandt, that ComEd classifies customers for

20       purposes of calculating distribution and transmission

21       charges; correct?

22          A     Yes, they do.



1           Q     Based on size and usage characteristics,  
2     ComEd charges a separate distribution facilities  
3     charge based on customer size and demand; is that  
4     correct?

5           MR. JOHNSON:   I'm going to object to this line  
6     of questioning just as being outside the scope.

7           MR. MUNSON:    It's foundation, your Honor.

8           JUDGE SAINSOT:   Foundation for?

9           MR. MUNSON:    For questions I'm about to ask.  
10    It's a general -- they do.

11   BY MR. MUNSON:

12           Q     You charge distribution facilities charges,  
13     correct, ComEd does or they don't?

14           JUDGE SAINSOT:   Well --

15           MR. JOHNSON:   I don't know if this is speech by  
16     you.

17           JUDGE SAINSOT:   I'm going to allow it.   It's  
18     pretty general.

19           MR. MUNSON:    I'm trying to cut it down.   We can  
20     go through the whole song and dance but it's a simple  
21     question.

22           JUDGE SAINSOT:   Go ahead, Mr. Brandt.

1           THE WITNESS:  Yes.

2   BY MR. MUNSON:

3           Q     Just to reiterate, ComEd charges separate  
4   distribution facilities charges based on customer  
5   size of demand; is that correct?

6           A     That's correct.

7           Q     Okay.  And that's a billing system issue,  
8   right, meaning --

9           A     I couldn't answer --

10          Q     -- the billing system automatically charges  
11   customers various charges based on their monthly  
12   billing; is that right?

13          A     I can't answer to the billing system.

14          Q     Okay.  But when you say in your testimony  
15   that you are advocating a flat fee for all customer  
16   classes, the -- and I think it's .04215 cents per  
17   kilowatt hour, if I have that right, a technician  
18   would key that into the system for all kilowatt hour  
19   usage for every customer; is that correct?

20          A     I truly don't know how the billing system  
21   works in terms of how it gets entered.

22          MR. MUNSON:  Okay.  Nothing further then.

1 JUDGE SAINSOT: Any redirect?

2 MR. REDDICK: One question.

3 JUDGE SAINSOT: Sure.

4 CROSS-EXAMINATION

5 BY

6 MR. REDDICK:

7 Q Conrad Reddick for IIEC, Mr. Brandt.

8 In implementing its plan for Energy

9 Efficiency and Demand Response Programs, isn't it

10 true that Commonwealth Edison anticipates tracking

11 the incentive applications by account number?

12 A We hope to or possibly, yes.

13 Q And you will cross check them against the

14 current ComEd accounts to assure that the program is

15 properly implemented and you don't have duplicate

16 recipients?

17 A That would be the intent.

18 Q And what information does ComEd associate

19 with an account number in its records?

20 A I think you need you to clarify what --

21 Q Well, is there a name associated with an

22 account number?

1           A     Number, address, location.

2           Q     After person's address?

3           A     Yes.

4           Q     A rate class?

5           A     Yes.

6           MR. REDDICK:   That's all.   Thank you.

7           JUDGE SAINSOT:   Any redirect?

8           MR. JOHNSON:   Just briefly, your Honor.

9                     REDIRECT EXAMINATION

10                    BY

11                    MR. JOHNSON:

12           Q     Mr. Brandt, Mr. Jolly had noted that -- or

13           asked the question that you hadn't presented -- asked

14           you if you had presented any evidence that the City's

15           proposals or leveraging proposals would not reduce

16           costs; correct?

17           A     Correct.

18           Q     And you're familiar of Section 12-103 of

19           the Public Utilities Act; correct?

20           A     Yes, I am.

21           Q     And in preparing ComEd's plan, it's not

22           required to show that certain proposals would not

1     reduce costs; correct?

2             A     That's correct.

3             Q     And, in fact, the City's leveraging

4     proposals do not provide any concrete plans about how

5     ComEd and the City would work together on these

6     leveraging proposals; correct?

7             A     That is correct.

8             Q     And they don't provide any total resource

9     cost tests analysis on these proposed programs?

10            A     Correct.

11            Q     And ComEd's plan as a whole, when

12     considered in conjunction with DECO's portfolio

13     provides a diverse cross-section of opportunities for

14     all of ComEd's customers; correct?

15            MR. JOLLY: I object as it's being beyond the

16     scope of cross-examination. I didn't ask anything

17     ComEd --

18            JUDGE SAINSOT: It's also a conclusion.

19            MR. JOLLY: -- versus DCEO.

20            JUDGE SAINSOT: It's stricken.

21

22     BY MR. JOHNSON:

1           Q     And, finally, Mr. Brandt, Mr. Reddick had  
2     asked you about tracking and accounting numbers;  
3     correct?

4           A     Correct.

5           Q     And are there any things that we cannot  
6     track under the plan with account numbers?

7           A     I think the primary one would be the  
8     residential lighting program where we would be giving  
9     discounts on CFL's at the stores.  Anything that's  
10    upstream type rebates or discounts, the customer  
11    would be getting it right at the register and we  
12    would not know who the customer was.

13           MR. JOHNSON:  Thank you.  Nothing further.

14                        REXCROSS-EXAMINATION

15                        BY

16                        MR. JOLLY:

17           Q     Could you turn back to Page 11 of the plan,  
18    please.  And, again, looking at the bullet point  
19    about leveraging existing program delivery  
20    structures, is ComEd going to require that any  
21    existing program be -- have applied to it the TRC  
22    test before it would consider leveraging with that

1 program?

2 A No, I don't think the program prior to  
3 being leveraged would have to meet the TRC, it's when  
4 it's leveraged with ComEd that it would have to  
5 demonstrate that it's cost effective.

6 Q Okay. And before considering leveraging  
7 with existing programs that you mention there, are  
8 you going to require that the -- the entity that  
9 currently implements that program demonstrate that  
10 ComEd's costs will be reduced by leveraging with that  
11 program?

12 A Like I said before, the process hasn't been  
13 worked out enough that -- I couldn't say for sure  
14 which way we would go with that.

15 Q Okay. So what exactly do you mean, then,  
16 when you say you are going to leverage with existing  
17 program delivery structures?

18 MR. JOHNSON: I just object that there's more  
19 to that bullet point than just saying we are  
20 leveraging, so it mischaracterizes a little bit the  
21 plan. I believe it says we would evaluate potential  
22 synergies.

1           MR. JOLLY:   That's fine.

2   BY MR. JOLLY:

3           Q     What do you mean by that -- you can read  
4   the entire thing into the record if you wish, that's  
5   fine.   I guess I'm not certain what you mean by that  
6   bullet point there.

7           A     I think what it would be mean is pretty  
8   much we say there.   Will evaluate potential synergies  
9   between our programs and existing program that could  
10   possibly increase participation or cost effectiveness  
11   across the ComEd portfolio.

12          Q     And do you have any opinion as to whether  
13   leveraging will generally -- either increase  
14   participation or improve the cost effectiveness of  
15   ComEd's programs?

16          A     I don't think I have an opinion.   I'd like  
17   to see each program and determine individually  
18   whether that program -- I think one of the keys is to  
19   look for programs that can attract enough customers  
20   and a cross section of customers and go across our  
21   entire service territory.

22          Q     Granted that the City of Chicago is not the



1     entire service territory, would you agree that it  
2     makes up a significant portion of your service  
3     territory?

4             A     I believe it makes up approximately  
5     one-third of our service territory, yes.

6             MR. JOLLY:   Okay.   I have nothing further.

7             MR. JOHNSON:   No further redirect, your Honor.

8             JUDGE SAINSOT:   Okay.   Thank you, Mr. Brandt.

9                     Okay.   We're taking a break.   Back at  
10    3:00 o'clock.

11                    (Recess taken.)

12                    (Whereupon, proceedings

13                    were had in

14                    Docket No. 07-0541.)

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1                   (Whereupon, the following  
2                   proceedings were had in  
3                   Docket No. 07-0540.)

4           JUDGE SAINSOT:  Am I right that Mr. Thomas is  
5 up next?

6           MR. JOHNSON:  I believe Mr. Eber is up next.

7           JUDGE SAINSOT:  Mr. Eber, okay.

8           MR. JOHNSON:  And first, ComEd would just move  
9 to admit Mr. Eber's direct and rebuttal testimony and  
10 affidavit.  ComEd first moves to admit into evidence  
11 Mr. Eber's corrected direct testimony.  It's ComEd  
12 Exhibit 3.0 corrected.  Originally filed  
13 November 15th, 2007 on e-Docket.  The corrected  
14 version was filed December 31st, 2007 on e-Docket.

15                   There are also exhibits to Mr. Eber's  
16 testimony -- actually, just one exhibit.  It's ComEd  
17 Exhibit 3.1 to his direct testimony.

18                   ComEd also moves to have Mr. Eber's  
19 rebuttal testimony admitted into evidence.  It's  
20 ComEd Exhibit 10.0.  It's dated December 21st, 2007.  
21 It was also filed on e-Docket on that day.

22                   As well as to admit ComEd Exhibit 10.1

1 to his rebuttal testimony.

2 Finally, we move to have Mr. Eber's  
3 affidavit admitted into evidence. It's ComEd 15.0.  
4 It was filed on e-Docket on January 3rd, 2008.

5 JUDGE SAINSOT: Okay. Any objection to  
6 admission of ComEd Exhibit 3.0, 3.1, 10.0, 10.1 or  
7 15.0?

8 (No response.)

9 Okay. Hearing no objection, your  
10 motion is granted, Counsel.

11 (Whereupon, ComEd  
12 Exhibit Nos. 3.0, 3.1, 10.0,  
13 10.1 and 15.0 were  
14 admitted into evidence as  
15 of this date.)

16 MR. JOHNSON: Your Honor, after he's sworn in,  
17 we'd tender him for cross-examination.

18

19

20

21

22

1 (Witness sworn.)

2 JAMES EBER,

3 called as a witness herein, having been first duly

4 sworn, was examined and testified as follows:

5 CROSS-EXAMINATION

6 BY

7 MS. McKIBBIN:

8 Q Good afternoon, Mr. Eber. I'm Anne

9 McKibbin with Citizens Utility Board, I have just a

10 few questions.

11 If you could please refer to your

12 rebuttal testimony which is on Line 78 which is on

13 Page 4 and, specifically, to the last sentence in

14 that paragraph, that's what I'll be referring to. On

15 there you're discussing the possibility for future

16 next PJM payments for ComEd's use of Nature First

17 Programs; correct?

18 A In the last sentence?

19 Q Yes.

20 A On Page 4 --

21 Q I'm sorry, the last sentence in the

22 paragraph that begins -- the sentence begins on

1 Line 78.

2 A Okay. Yes, we are.

3 Q And you imply that the possibility of  
4 future net PJM payments for the Nature First demand  
5 response resource depends on PJM rules; correct?

6 A It does, yes.

7 Q And PJM rules are subject to change through  
8 the stakeholder process; correct?

9 A That's one they would change, yes.

10 Q And is it possible that FERC or Congress  
11 could in the future, mandate that PJM change those  
12 rules that would affect the payments for this  
13 program?

14 A I really don't know.

15 Q Okay. Are you aware of anything at this  
16 time that would preclude FERC or Congress from  
17 mandating a change to those rules in the future at  
18 some point?

19 A I am not aware, no.

20 Q And is it possible that payments for the  
21 Nature First demand response resource could in the  
22 future come from some other source, such as an

1 Illinois power agency or some other agency?

2 MR. JOHNSON: I'm going to object. That calls  
3 for speculation for speculation.

4 MS. McKIBBIN: I'll rephrase it.

5 BY MS. McKIBBIN:

6 Q Do you know of anything at this time that  
7 would prevent some other agency in the future from  
8 providing revenues streamed from that program?

9 A No, I don't know of anything at this time  
10 that would preclude that.

11 MS. McKIBBIN: That's all I have. Thank you.

12 CROSS-EXAMINATION

13 BY

14 MR. MUNSON:

15 Q Good afternoon, Mr. Eber. Mike Munson for  
16 the Building Owner's and Manager's Association of  
17 Chicago.

18 A Good afternoon.

19 Q Now, under ComEd's proposal, are the demand  
20 response programs available to all classes of  
21 customers?

22 A Under -- can you --

1           Q     Your proposal.

2           A     Under the plan?

3           Q     I'm sorry, under ComEd's -- strike that.

4     Let me rephrase.

5                     ComEd provides demand response

6     programs to all classes of customers; is that

7     correct?

8           A     That is correct.

9           Q     Including competitively declared classes?

10          A     Yes, that is correct.

11          Q     So if a customer is eligible for ComEd's

12     programs -- even though a customer is eligible, a

13     customer may make an individual decision not to

14     participate in ComEd's demand response offering; is

15     that correct?

16          A     Yes, it's a choice.

17          Q     ComEd will not be limiting customer

18     opportunities to participate with competitive demand

19     response providers; is that correct?

20          A     No, we don't.

21          Q     Customers can buy demand response products

22     and services from a number of providers other than

1 the utility; correct?

2 A That is correct.

3 Q For example, Ares or registered curtailment

4 service providers may offer demand response products

5 and services to customer?

6 A I believe through PJM they have to be

7 registered CSPs to provide products but those do

8 exist.

9 Q You referred to PJM programs in your

10 testimony. Are you, by chance, familiar with their

11 responsive reserve program?

12 A I am.

13 Q Do you know the metering requirements for a

14 customer to participate in that program?

15 A I am aware of them. I don't know them

16 exactly.

17 Q Do you know generally what those

18 requirements are?

19 A They are for real time metering that's able

20 to record usage on a very tight interval level and

21 record it and supply it the day of.

22 Q And for customers over 400 kw in ComEd's



1 service territory, interval meters are required; is  
2 that correct?

3 A I'm not sure.

4 Q I'm not trying to be tricky here.

5 A I don't know.

6 Q Is it -- the interval meters that ComEd  
7 provides such -- competitively declared customers,  
8 they're on a half-hour demand; is that correct?

9 A That is correct.

10 Q And had a half-hour demand would not  
11 satisfy the criteria under PJM's responsive program;  
12 is that correct?

13 A It would not.

14 Q Would you agree that all customers -- all  
15 of ComEd's customers pay for ComEd's costs associated  
16 with offering demand response products regardless of  
17 whether or not a particular customer is purchasing  
18 such services from ComEd?

19 MR. JOHNSON: I'm going to object to that  
20 question as outside of Mr. Eber's testimony. That  
21 goes to a rate design issue.

22 MR. MUNSON: I think it's smack on his

1 testimony.

2 JUDGE SAINSOT: Can you provide me the smack on  
3 cite?

4 MR. MUNSON: Sure. Let me just rephrase  
5 instead of taking the time.

6 JUDGE SAINSOT: Okay.

7 MR. MUNSON: Nothing further.

8 JUDGE SAINSOT: I have a few questions for  
9 Mr. Ebers. Does anybody else have questions before  
10 me?

11 (No response.)

12 EXAMINATION

13 BY

14 JUDGE SAINSOT:

15 Q Am I right if I say that ComEd's sole  
16 demand response program that's responsive to the  
17 statute is this Nature First Program?

18 A That is one we're proposing to meet the  
19 legislative obligation, yes.

20 Q And on Page 8 of your direct testimony you  
21 talked about targeting customers for the Nature First  
22 Program that are likely to have the correct home

1 configuration for that program. What kind of  
2 configuration would be required, if you know?

3 A You need to have -- you need to be a  
4 single-family designation with a central air  
5 conditioner.

6 Q So it wouldn't even have to be a house, it  
7 could be a big apartment or something?

8 A No. Apartments would be typically  
9 classified as multi-family, they would not be  
10 eligible for the program.

11 Q And I think in your corrected testimony I  
12 gather that there are two components to that program;  
13 there's one where the air conditioning gets turned  
14 off for 15 minutes and there's another one where it  
15 gets turned off for, I don't know, a couple hours or  
16 something?

17 A Correct. There's two options for that  
18 program.

19 Q And am I right that in the -- well, let me  
20 ask you, in the 12 years that -- ComEd has already  
21 had this program for 12 years?

22 A Correct.

1           Q     In those 12 years, how many times has it  
2     used each component?

3           A     It's averaged per year, one and a quarter.

4           Q     For both of them; is that correct?

5           A     For both programs, for both options.  
6     They're typically called at the same time.

7           Q     Okay. And I also gathered from your  
8     testimony that one of the reasons -- I don't know,  
9     maybe the only reason ComEd doesn't use this program  
10    very much is because it doesn't pay the program  
11    participants very much; is that correct?

12          A     I wouldn't characterize it that way. I  
13    think the program was designed, you know, very  
14    specifically to meet peak load reduction requirements  
15    and there are only a handful of circumstances where  
16    the program is required to be operated. So our use  
17    of the program sparingly is largely to -- you know,  
18    to ensure customer -- I mean, to respect that -- that  
19    resource with the customer because the customer does  
20    experience the loss of some air conditioning when we  
21    cycle or shed them, so -- and if conditions aren't  
22    right to call the program, we wouldn't call it.

1           Q     But in your testimony you did talk about --  
2     you did express some fear of alienating customers by  
3     using it too much and that fear seemed to be based on  
4     lack of financial --

5           A     Well, the customer's expectations of use of  
6     the programs, you know, for customers that have been  
7     on it have been built up over the years and the  
8     program was designed to be a resource for use at peak  
9     times. If we started using it a lot more without  
10    changing the way the programs is designed, then it  
11    would -- you know, customers would have -- it would  
12    be a different value proposition for customers to  
13    react to. They would be experiencing more  
14    interruptions for the same amount of money because it  
15    is a fixed incentive per year.

16          Q     Oh, it is a fixed incentive?

17          A     Yeah.

18          Q     That, I didn't know.

19          A     The cycling program pays \$20 a year,  
20    whereas a shed program pays \$40, whether we call it  
21    or not.

22          Q     And I'm just curious, has ComEd ever

1 collected information that funds -- let me rephrase  
2 that.

3 Is there surveys or something like  
4 that demonstrating why these people signed up?

5 A Well, you know, based on experience with  
6 the program and working with customers, there's -- I  
7 mean, we have a feel for why customers sign up.  
8 There's two or three main reasons. One would be for  
9 the financial incentive. The other would be from an  
10 environmental or reliability driver, customers want  
11 to do their part and it is one way a residential  
12 customer can help in that way. Those are the two  
13 primary drivers we see.

14 Q And I guess I am a little -- I have some  
15 questions -- Mr. Thomas was talking about the \$80 per  
16 per O & M costs that -- O & M increase for this  
17 program. Is there a break down as to how much  
18 advertising -- how much of that \$80 would be  
19 advertising?

20 A The \$80 represents what we think is -- some  
21 of several things that we feel is necessary to  
22 promote, advertise, raise awareness, test messaging,

1     produce promotional materials and then fulfill -- you  
2     know, send out promotional materials and there's not  
3     a specific break down of that but that \$80 is the sum  
4     of those costs divided by the number of customers we  
5     would expect to get from those activities.

6           Q     So it's your testimony that the \$80 is  
7     totally -- per person is totally promotional costs,  
8     it's not the costs of installing the little gadget on  
9     anybody's air conditioner or anything like that?

10          A     That is the estimate of our promotional  
11     costs.

12          JUDGE SAINSOT:   Okay.   I think that's it for  
13     me.   Thanks.

14          THE WITNESS:   Thank you, your Honor.

15          JUDGE SAINSOT:   Any redirect?

16          MR. JOHNSON:   No, your Honor.

17          JUDGE SAINSOT:   Okay.   Thank you, Mr. Eber.

18          MR. JOHNSON:   Your Honor, just one matter  
19     initially with Mr. Crumrine's testimony.   We had the  
20     motion this morning that you partially granted  
21     striking certain of -- the rebuttal testimony, I  
22     believe.   Mr. Crumrine actually had not yet filed an

1 affidavit yet. He was stranded in Michigan due to  
2 some inclement weather, so we have the signed  
3 affidavit as of this morning but I'm just wondering  
4 what you'd like us to do as far as striking that. If  
5 you want us to black marker it out or --

6 JUDGE SAINSOT: Magic marker, pen, nothing  
7 fancy.

8 MR. JOHNSON: Okay. We'll take care of that  
9 here but keep things going and move to have this  
10 admitted subject to the partial granting of that  
11 motion to strike his rebuttal.

12 So ComEd would move, then, to have the  
13 direct testimony of Mr. Crumrine admitted into  
14 evidence as ComEd Exhibit 5.0, dated November 15th,  
15 2007 filed on e-Docket that same day.

16 There are also exhibits to that  
17 testimony that we would also move for admission.  
18 ComEd Exhibit 5.1, ComEd Exhibit 5.2 and ComEd  
19 Exhibit 5.3.

20 ComEd also moves to have the rebuttal  
21 testimony of Mr. Crumrine admitted into evidence.  
22 It's ComEd Exhibit 11.0 December 21st, 2007, filed on



1 e-Docket that same day. There are no exhibits to  
2 that testimony.

3 And, finally, the affidavit of  
4 Mr. Crumrine, which will be filed on e-Docket today  
5 or I guess we could just -- I don't know if you have  
6 a preference, we can give it to the court reporter or  
7 we can file it on e-Docket. It has not been filed  
8 yet.

9 JUDGE SAINSOT: I don't think it needs to be  
10 filed. It's just that the court reporter is kind of  
11 inundated, so if you just give it to me, that's fine.

12 MR. JOHNSON: Sure. It will be ComEd  
13 Exhibit 20.

14 JUDGE SAINSOT: Okay. So for the record you  
15 are seeking admission of ComEd Exhibit 5.0, 5.1, 5.2,  
16 5.3, 11.0 and 20.0 is there any objection?

17 (No response.)

18 Okay. Hearing none, your motion is  
19 granted, Counsel.

20

21

22

1                   (Whereupon, ComEd  
2                   Exhibit Nos. 5.0, 5.1, 5.2,  
3                   5.3, 11.0 and 20.0 were  
4                   admitted into evidence as  
5                   of this date.)

6           MR. JOHNSON: Your Honor, so you could follow  
7   along, would you like us to bring you the copies now  
8   and then we can come up and strike --

9           JUDGE SAINSOT: Sure.

10          MR. JOHNSON: -- a portion afterwards.

11                   (Witness sworn.)

12          MR. JOHNSON: And ComEd would then tender  
13   Mr. Crumrine for cross-exam.

14          THE COURT: Ms. McKibbin?

15          MS. MCKIBBIN: I don't have any.

16          JUDGE SAINSOT: Anybody?

17          MR. REDDICK: Yes. I'm trying to locate a  
18   piece of paper.

19          JUDGE SAINSOT: Okay. Take your time.

20

21

22

1                   PAUL CRUMRINE,  
2   called as a witness herein, having been first duly  
3   sworn, was examined and testified as follows:  
4                   CROSS-EXAMINATION  
5                   BY  
6                   MR. REDDICK:  
7           Q    Mr. Crumrine, Conrad Reddick for IIEC.  
8           A    Good afternoon.  
9           Q    I first want to talk about the -- well, all  
10   of my questions will deal with the cost recovery  
11   scheme that ComEd proposes. Do you agree that cost  
12   recovery under ComEd's proposal is not based on an  
13   attempt to recover cost of programs from cost causers  
14   as that term is traditionally used in Article 9  
15   rate-making?  
16           A    Yes.  
17           Q    And I believe your testimony indicates that  
18   while program participants will receive direct  
19   benefits from participating in the plan and the  
20   expenditure of plan costs, not all customers will  
21   receive direct benefits; is that correct?  
22           A    It depends on how you characterize the

1     benefits from impacts on wholesale market prices and  
2     the environmental impacts and benefits that accrue to  
3     that. Sometimes those are call direct benefits,  
4     sometimes they're indirect but they are benefits to  
5     not participants.

6           Q     I believe you characterized them as  
7     indirect, though?

8           A     Generally, yes.

9           Q     And is it true at that ComEd expects all  
10    customers will receive indirect benefits of the kind  
11    you just described?

12          A     Yes.

13          Q     Specifically, ComEd expects that customers  
14    will benefit from the programs effect on supply  
15    prices?

16          A     That's one of them.

17          Q     Is it correct that ComEd has not developed  
18    a dollar estimate of that price effect?

19          A     Are we still talking about the impact on  
20    wholesale price?

21          Q     On prices.

22          A     That's correct.

1           Q     Has ComEd attempted to quantify the  
2     expected indirect benefits to various customer  
3     classes?

4           A     No.

5           Q     At your rebuttal testimony, Page 150 -- I'm  
6     sorry, Page 7, Line 156, you --

7           A     I'm sorry, which line number again?

8           Q     Rebuttal, Page 7. You comment on the  
9     expected pressure on market prices. Are you  
10    referring there to the prices of energy and capacity  
11    in the PJM market?

12          A     That's generally the relevant market for  
13    northern Illinois, yes.

14          Q     And I believe in response to a data request  
15    from the IIEC you provided information that indicated  
16    that the peak demand in that market in 2006 was  
17    144,644 megawatts. Do you recall that?

18          A     That sounds right.

19          Q     Would you accept, subject to check, that  
20    the energy delivered in 2006 corresponding to that  
21    peak into -- well, let me rephrase that and start  
22    over.

1                   Would you accept, subject to check,  
2   that the energy delivered in 2006 in PJM was 729  
3   million megawatt hours as shown in PJM's annual  
4   report in 2006 at Page 2? I do have a copy if you'd  
5   like to look at it.

6           A     Please. It says, 279,000 gigawatt hours  
7   for 2006, yes, you're correct.

8           MR. REDDICK: Thank you. With Counsel's  
9   permission, I'd like to use my computer. I can't  
10   locate the paper copy that I had prepared for  
11   Mr. Crumrine.

12          JUDGE SAINSOT: Do you have a cord hanging from  
13   that thing?

14          MR. REDDICK: A cord hanging from this?

15          JUDGE SAINSOT: Yes.

16          MR. REDDICK: I hope not.

17          JUDGE SAINSOT: Just checking.

18          MR. JOHNSON: I'm sorry, what document are we  
19   referring to, Counsel?

20          MR. REDDICK: I'm going to show you in a  
21   moment, so I won't be talking into avoid. This is  
22   Mr. Crumrine's testimony from the Docket 05-0597?

1           THE WITNESS: Which one? I filed five pieces  
2 of testimony -- no, seven pieces of testimony in that  
3 case.

4 BY MR. REDDICK:

5           Q Rehearing rebuttal.

6           A Okay.

7           Q Exhibit 62 corrected.

8                       Page 5, Line 98. Do you testify  
9 there, quote, To the extent the Commission sets rates  
10 on a basis other than on traditional rate-making  
11 principals, foremost cost, the door is open for many  
12 of these entities too come before it seeking  
13 subsidies. We urge the Commission not to head in  
14 that direction, end quote. Was that your testimony  
15 in that case?

16          A Well, you've read one sentence out of the  
17 middle of a 31 page piece of testimony which is  
18 probably taken kind of out of context. You've read  
19 the sentence correctly, but that's all that it is.

20          Q And taking that sentence and in the context  
21 of this case, have you changed your position?

22          A I don't believe that that's -- I think

1 we're talking about apples and oranges and between --  
2 the issue that was dealt with in this particular  
3 section in my testimony in 0597 and the issue we're  
4 talking about today.

5 Q And the issue in that particular part of  
6 your testimony was Rider GCB 7, was it?

7 A Yes, it was Rider GCB, government  
8 consolidated billing 2007.

9 Q And the subsidy that you spoke of there was  
10 what ComEd characterized as a subsidy from customers  
11 outside Chicago or all customers to the City of  
12 Chicago; correct?

13 A That was part of the argument. It was --  
14 that's not the entire argument against -- the  
15 arguments that the City was marking --

16 Q I understand but that --

17 A -- that was only one of the arguments.  
18 It's an incomplete explanation of the argument.

19 Q My question didn't deal with the arguments,  
20 Mr. Crumrine. My question was, is that the subsidy  
21 you were describing?

22 A Is that the what?



1 Q Is that the subsidy to which you referred?

2 A Yes.

3 Q And that was the subsidy in ComEd's view  
4 where certain customers were being subsidized by a  
5 larger group of customers who did not directly  
6 benefit from the subsidy?

7 A I think that's a dramatic over  
8 simplification of that issue in the docket. There  
9 was some substantial -- although I'm not an attorney,  
10 there were substantial legal arguments about --

11 JUDGE SAINSOT: Mr. Crumrine, that's a yes or  
12 no question.

13 THE WITNESS: I'm sorry, could I have the  
14 question again?

15 JUDGE SAINSOT: Could you read it back.

16 (Record read as requested.)

17 THE WITNESS: No.

18 BY MR. REDDICK:

19 Q Does ComEd generally oppose subsidies?

20 A Under general rate-making principals, all  
21 other things being equal, you would prefer to not  
22 have subsidies but there are times when it is very

1 appropriate given other circumstances within the  
2 rate-making process where subsidies can be  
3 appropriate. It's classic Dr. Braun Brite  
4 (phonetic) --

5 Q I'm just thinking.

6 A -- principles.

7 Q Would you describe one situation where a  
8 subsidy is appropriate?

9 A I believe a good example is ComEd's  
10 position with an agreement with IIEC in the rehearing  
11 phase of the last rate case in which customers served  
12 at high voltage over 10 megawatts were receiving --  
13 are being charged delivery rates lower than their  
14 full costs.

15 Q And IIEC disputed ComEd's characterization  
16 that that is a subsidy in that case; isn't that  
17 correct?

18 A I don't recall.

19 Q Of course not.

20 Would you look at Page 11, Line 224?

21 JUDGE SAINSOT: Is this the direct or --

22 MR. REDDICK: No, it's the document that only

1 Mr. Crumrine has. This is Exhibit 62 corrected.

2 MR. DeBROFF: Could you say that case number

3 again a little bit louder?

4 MR. REDDICK: In 05-0597, Exhibit 62 corrected.

5 JUDGE SAINSOT: Do you have a paper copy?

6 MR. REDDICK: Page 11, Line 224.

7 JUDGE SAINSOT: That is the paper I could not

8 locate. Okay.

9 MR. REDDICK: That is the paper that I could

10 not locate. I do have it written that I can show you

11 as soon as I read it.

12 BY MR. REDDICK:

13 Q At that location does your testimony read,

14 ComEd continues to favor the localization of the

15 subsidies so that the customers who benefit most from

16 the subsidy would pay for it. The second best

17 alternative is to recover the shortfall from all

18 ComEd customers. Is that an accurate restatement of

19 your testimony?

20 A You've read those words correctly on the

21 document.

22 Q Okay.

1 JUDGE SAINSOT: Is this testimony?

2 MR. REDDICK: Yes.

3 JUDGE SAINSOT: It doesn't look like it.

4 MR. REDDICK: It's rewritten. I excerpted it

5 from the testimony, just those words. He has the

6 entire document.

7 BY MR. REDDICK:

8 Q Have you changed your position on that

9 issue in this docket?

10 A That issue is not an issue in this docket.

11 Q Have you changed your position on the

12 localization of subsidies in this docket?

13 A The localization of subsidies that was

14 discussed in that --

15 Q The localization of subsidies in general.

16 A I think it depends. I can't answer that.

17 It's too general of a question to answer with a yes

18 or no.

19 Q If there were a subsidy in this docket,

20 would you favor minimizing the adverse impact on

21 persons not directly benefitting from the subsidy by

22 localizing them?

1           MR. JOHNSON: I'm going to object to that as  
2   calling for speculation.

3           MR. REDDICK: It certainly does not. That is  
4   the issue in this case.

5           MR. JOHNSON: Could you -- could the court  
6   reporter read the question back, please.

7           JUDGE SAINSOT: Go ahead.

8                       (Record read as requested.)

9           JUDGE SAINSOT: Okay. Here's my question: Is  
10   Mr. Crumrine an occurrence witness or an expert?

11          MR. REDDICK: I think according to ComEd, he's  
12   an expert.

13          JUDGE SAINSOT: Is he an expert in the thing  
14   that you are asking him his opinion about?

15          MR. REDDICK: He is, as far as I know, the rate  
16   expert for ComEd. We're talking about localizing  
17   recovery of costs.

18          JUDGE SAINSOT: Okay. Just checking.

19          MR. LYON: So we object as to calling for  
20   speculation. The sentence started, If there were a  
21   subsidy in this case.

22          JUDGE SAINSOT: He's asking for an opinion. He

1 can answer.

2 THE WITNESS: Forgive me but I've lost the  
3 question again.

4 (Record read as requested.)

5 THE WITNESS: I'm not sure what you mean by  
6 "localizing them," Mr. Reddick.

7 BY MR. REDDICK:

8 Q By localizing the recovery of the costs.

9 A Localizing them in what way? I'm sorry,  
10 I'm just not familiar with that term as it would be  
11 used here.

12 Q What meaning did you give it in  
13 Docket 0597?

14 A That was a specific situation on a specific  
15 proposal on a specific rider with a specific legal  
16 context. It's apples and oranges. So  
17 localization --

18 MR. REDDICK: Move to strike, nonresponsive.

19 BY MR. REDDICK:

20 Q What was the meaning you gave -- I'm sorry,  
21 I'd like --

22 A Localization in that docket meant a

1 geographic localization on residents of the City of  
2 Chicago.

3 MR. JOHNSON: I object to that motion to  
4 strike. It was an open-ended question. He was just  
5 answering it in response to Mr. Reddick's question.

6 JUDGE SAINOT: Your objection is overruled  
7 because he answered the question correctly  
8 afterwards.

9 BY MR. REDDICK:

10 Q Is localization for you only a geographic  
11 concept?

12 A I can't say with 100 percent certainty but  
13 I think generally in my career that's my typical  
14 usage of localization, it would be some sort of  
15 geographic basis, that's the way I would normally use  
16 that term.

17 Q And if one were attempting to minimize the  
18 adverse impact of customers who do not directly  
19 benefit from a subsidy by localizing in a class --  
20 customer class sense, would you oppose that?

21 A Well, if there is a subsidy, it's got to be  
22 paid by somebody else, it would have to go to some

1     other customer class based on some logic and some,  
2     you know, policy reason for doing that.

3           Q     And, generally, would you favor minimizing  
4     the adverse impact, where possible?

5           A     In the very general abstract rate design  
6     aspect, yes, I do.

7           MR. REDDICK:   Thank you.

8           JUDGE SAINSOT:   Redirect?

9           MR. JOHNSON:   Yes, your Honor, if we could just  
10    have a few moments.   Just some brief redirect your  
11    Honor.

12                         REDIRECT EXAMINATION

13                         BY

14                         MR. JOHNSON:

15           Q     Mr. Crumrine, Mr. Reddick asked you some  
16     questions in response to that testimony that he  
17     showed you from Docket 05-0597 and your quotes from  
18     there.   He mentioned -- I'm sorry, he asked you a  
19     question and then you mentioned the comparison  
20     between this docket and that docket was apples and  
21     oranges, I believe.   Could you please explain what  
22     you meant by the apples and oranges comment?



1           A     Well, that issue that we were talking about  
2     from the last ComEd rate case involved the City of  
3     Chicago and a request or an interpretation of the  
4     statute, the Public Utilities Act, that would have  
5     resulted in the City of Chicago receiving discounts  
6     on their total electric bill that would have been --  
7     had to have been paid by other customers, someone  
8     else.  When I said -- and I posed it as a subsidy in  
9     the classic sense that rate-making usually means and  
10    that when I said that if the Commission were going to  
11    grant that subsidy to the City of Chicago, I favored  
12    what I called localization, meaning, that the subsidy  
13    should be paid for -- it was for the City of Chicago  
14    accounts, not all the residential, not all the  
15    businesses in the City of Chicago, it was for the  
16    City of Chicago accounts, including the CTA, the Park  
17    District, the schools and that the localization that  
18    I was suggesting was that the other residents and  
19    businesses in the City of Chicago in that geographic  
20    sense of localization should pay for that subsidy  
21    that the city would have received in that docket.  My  
22    point was that that's a significantly different issue

1     than what we're talking about here.

2           Q     You referenced the word "subsidy" and  
3     Mr. Reddick asked you a few questions that began with  
4     the phrase "if there was a subsidy in this docket".  
5     Do you understand there to be a subsidy in this  
6     docket?

7           A     No, I do not I believe there is a subsidy  
8     in this docket.

9           Q     Why is that?

10          A     As I explained in testimony, the Public  
11     Utilities Act goes to great lengths to talk about  
12     saving energy, saving it for -- to the benefit of all  
13     customers in ComEd's service territory. It talks  
14     about direct benefits, indirect benefits and I  
15     believe that ComEd's proposal for a single cents per  
16     kilowatt hour recovery of those costs does not result  
17     in subsidies.

18          MR. JOHNSON:   Okay.   That's all we have.   Thank  
19     you.

20          JUDGE SAINSOT:   Any recross?

21          MR. REDDICK:   Yes, please.

22

1                   RECROSS-EXAMINATION

2                   BY

3                   MR. REDDICK:

4           Q     Mr. Crumrine, would you define subsidy?

5           A     I would define in this case subsidy as an  
6     inappropriate allocation of costs to certain  
7     customers to the detriment of that class and I do not  
8     believe that that is going on in this docket.

9           MR. REDDICK: Move to strike the later part of  
10    that answer.

11          JUDGE SAINSOT: Your motion is granted. It's  
12    not responsive.

13          BY MR. REDDICK:

14          Q     When you say "inappropriate allocation of  
15    costs," do you mean that the recovery is less than  
16    the cost?

17          A     No. I mean inappropriate when one takes  
18    into account the entire set of circumstances that  
19    surrounds a particular rate-making issue. And in  
20    this case, we're talking about the entirety of  
21    section, you know, 12-103. We've been talking about  
22    no time in the whole docket.

1           Q     So your definition here is not a  
2     quantitative one based on cost?

3           A     It is, in part, quantitative but it is  
4     informed with -- in the general context of 12-103.

5           Q     It is not a quantitative one; correct?

6           A     I believe it's quantitative and  
7     qualitative.

8           Q     Which means it's not quantitative alone?

9           A     Not quantitative alone, no.

10          Q     So it would be your position that if a  
11     customer class received \$100 in expenditures under  
12     the plan for Energy efficiency and Demand Response  
13     Programs and the recovery from that class was \$1,000,  
14     there would still not necessarily be a subsidy?

15          A     Not necessarily.

16          MR. REDDICK:   Thank you.

17          MR. JOHNSON:   Nothing further.

18          JUDGE SAINSOT:   Okay.   You can step down.  
19     Thank you, Mr. Crumrine.

20          MR. JOHNSON:   If could we just have one minute  
21     before the CUB witness.

22          JUDGE SAINSOT:   Sure.

1                   (Whereupon, proceedings  
2                   were had in  
3                   Docket No. 07-0539.)  
4  
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1                   (Whereupon, the following  
2                   proceedings were had in  
3                   Docket No. 07-0540.)  
4                   CHRISTOPHER C. THOMAS,  
5   called as a witness herein, having been previously  
6   duly sworn, was examined and testified as follows:  
7                   DIRECT EXAMINATION  
8                   BY  
9                   MS. McKIBBIN:  
10           Q     Have you prepared testimony on behalf of  
11   the Citizens Utility Board in the proceeding with  
12   Docket No. 07-0540?  
13           A     Yes.  
14           Q     And do you have before you a copy of CUB  
15   Exhibit 1.0 and its attachments CUB Exhibit 1.01,  
16   1.07 --  
17           A     Yes.  
18           Q     -- which were filed in that docket on  
19   December 14th?  
20                   And are those documents true and  
21   correct copies of the testimony you prepared?  
22           A     Yes.

1 Q Do you have any corrections to make?

2 A I don't.

3 MS. McKIBBIN: Thank you.

4 At this time, I would move to enter

5 the testimony and its attachments into the record.

6 It's CUB Exhibit 1.0 and it's attachments,

7 CUB Exhibits 1.01 through 1.07.

8 JUDGE SAINSOT: And that is, so we're clear, in

9 07-0540?

10 MS. McKIBBIN: Yes.

11 JUDGE SAINSOT: Your motion is -- is there any

12 objection?

13 MR. JOHNSON: (Shaking head side to side.)

14 JUDGE SAINSOT: Hearing none, your motion is

15 granted, Counsel.

16 MS. McKIBBIN: Thank you, your Honor.

17 (Whereupon, CUB

18 Exhibit Nos. 1.0, 1.01-1.07 were

19 admitted into evidence as

20 of this date.)

21 MS. McKIBBIN: And I believe Mr. Lyon just made

22 a --

1           MR. LYON: Subject to stipulation, ComEd is  
2     waving cross of CUB witness Mr. Thomas.

3           JUDGE SAINSOT: Subject to stipulation?

4           MR. LYON: We just agreed to the admission of  
5     one data request response.

6           JUDGE SAINSOT: Okay. Got it. So there's no  
7     questions for Mr. Thomas? I'm sorry to burst your  
8     bubble here, but I may have one or two.

9                         EXAMINATION

10                        BY

11                        JUDGE SAINSOT:

12           Q     You know, Mr. Thomas, on Page 9 of your  
13     direct testimony you recommend that they --  
14     essentially, you recommend the Commission order ComEd  
15     to schedule demand response events for the Nature  
16     First Program. Could you defined what an event it?

17           A     An event would be, basically, just ComEd's  
18     calling of the program, scheduling in the PJM market  
19     and then calling the program, cycling the air  
20     conditioner.

21           Q     Right, so they would be turning somebody AC  
22     off?



1           A     That's right. That's right.

2           Q     And how -- how do you think ComEd should  
3 determine when those events should take place?

4           A     ComEd is going to have to use its best  
5 judgment to determine how many demand responses the  
6 PJM is likely to call throughout the rest of the  
7 cooling season as well as if the temperature on a  
8 current day warrants the scheduling the event, as  
9 well as -- in addition to the temperature, I'd say  
10 ComEd should also be considering what the prices are  
11 scheduled to be. It seems like the prices don't hit  
12 above -- I think in response to -- we could look at  
13 the prices in 2007 to help us put a frame work around  
14 this, I think. CUB Exhibit 1.05, ComEd identified  
15 the 20 hottest or 20 highest priced days of the year  
16 and I think if you look at CUB Exhibit 1.05, the  
17 first -- the second page of Attachment 1 -- or the  
18 first page of Attachment 1 you can see that the price  
19 was above \$100 or the LMP was above \$100 what, eight  
20 times? Eight times that year, so I think that could  
21 be one criteria that ComEd should be considering,  
22 whenever the LMP is above \$100.

1           Q     And my final question for you is, I'm a  
2     little unclear about your testimony of these RTO  
3     demand programs.   What are those.

4           A     Those are mechanisms that provide payment  
5     streams for programs like ComEd's Nature First  
6     Program.   So ComEd actually receives -- there are two  
7     different programs that Nature First participates in.  
8     One is a capacity market program where -- just  
9     because Nature First is available whenever PJM  
10    declares a demand response event when there are  
11    constraints on the system, the program receives a  
12    payment similar to any other capacity resource within  
13    PJM.   Now, in addition to that payment stream,  
14    there's also an energy market payment stream  
15    available that Mr. Eber described and that I've  
16    described in my testimony that would allow the  
17    program to receive energy payments.

18          Q     But these come from outside sources, then,  
19    they wouldn't be subsidized by the rate payers,  
20    necessarily?

21          A     Not necessarily, that's correct.

22               JUDGE SAINSOT:   Okay.   Okay.   Thank you.   I

1     have no further questions.

2             MS. McKIBBIN:   Thank you.

3             JUDGE SAINSOT:   Thank you.

4                     Okay.   What's next?

5             MR. PABIAN:    I think we have to introduce our

6     DR's.

7             MR. WETZLER:   Perhaps after the data requests

8     are in the record so there's no question they're in

9     the record, I can renew my motion, your Honor.

10            JUDGE SAINSOT:   How many DR responses do we

11    have?

12                     (Discussion off the record.)

13                     (Change of reporters.)

14            JUDGE SAINSOT:   Do you have anything,

15    Mr. Reddick, in 0540?

16            MR. REDDICK:    Yes, I do.

17            MR. REDDICK:    For IIEC in Docket 07-0540, and

18    this would be let's go with IIEC Group Exhibit B,

19    even though there isn't an A in this docket, just to

20    avoid confusion.

21            JUDGE SAINSOT:   You think that that would avoid

22    confusion?

1           MR. REDDICK:   It would help me.

2                       Okay "A." The "As" have it.

3           JUDGE SAINSOT:   What was the last one you

4 submitted?

5           MR. REDDICK:   It was in a different docket.

6           JUDGE SAINSOT:   In a different docket.

7                       Go ahead. "B" might confuse me,

8 though.

9           MR. REDDICK:   Okay. Group Exhibit A in Docket

10 07-0540.

11           JUDGE SAINSOT:   You can approach.

12           MR. REDDICK:   It would be the Environmental Law

13 and Policy Center response to IIEC 1-1. Staff

14 Witness Lazare's response in Docket 07-0540 to IIEC

15 1-5.

16           JUDGE SAINSOT:   Mr. Reddick, are we done with

17 0540?

18           MR. REDDICK:   No, that's the second document. I

19 have more.

20           JUDGE SAINSOT:   Let's do all of the 0540, then

21 go back to 0539.

22           MR. REDDICK:   Correct.

1                   We were at Staff Witness Lazare. And  
2   we have several data responses from Commonwealth  
3   Edison, Commonwealth Edison response to IIEC 2.1.  
4           JUDGE SAINSOT:   We're calling this whole thing  
5   IIEC Group Exhibit A, right?  
6           MR. REDDICK:   Correct.  
7           JUDGE SAINSOT:   You won't mind if I write that  
8   on top?  
9           MR. REDDICK:   I would appreciate it.  
10                       Commonwealth Edison response to IIEC  
11   Request 2.4.  
12           JUDGE SAINSOT:   Okay.  
13           MR. REDDICK:   Commonwealth Edison response to  
14   IIEC Request 2.5, and Commonwealth Edison response to  
15   IIEC Request 3-1.  
16           JUDGE SAINSOT:   All right.  
17                       (Whereupon, IIEC Cross Exhibit A  
18                       was admitted into evidence.)  
19           JUDGE SAINSOT:   So now, you've got -- you've  
20   got something for 0539?  
21           MR. REDDICK:   Yes. But I thought we were going  
22   to -- does anybody else have any?

1 JUDGE SAINSOT: Who else?

2 MR. KELTER: ELPC has Group Exhibit 1.0 for  
3 Docket 07-0540. And, again, it's a number of data  
4 responses that have been stipulated to, and we will  
5 circulate a list of all those responses to the  
6 parties.

7 JUDGE SAINSOT: What else do we have that's  
8 going to be entered pursuant to stipulation?

9 MR. JOHNSON: Your Honor, ComEd has a Group  
10 Exhibit, as well.

11 JUDGE SAINSOT: Okay.

12 MR. JOHNSON: Move to admit ComEd Cross or  
13 actually, I guess we are calling them group exhibits,  
14 so ComEd Group Exhibit 1. It will have five subparts  
15 the first is the AG's responses to ComEd's data  
16 request that's numbers 1.02 to 1.28.

17 We have the Citizens Utility Boards'  
18 responses to ComEd's data request. It's only one  
19 response, 1.10.

20 ELPC's responses to ComEd's data  
21 request Nos. 1.02 to 1.04.

22 NRDC's responses to ComEd's data

1 request Nos. 1.02 to 1.05.

2 And Staff responses to ComEd's data  
3 request Nos. 1.02 to 1.08.

4 I'm sorry. I said there was five at  
5 the beginning. There is actually six.

6 So the last one is IIEC's responses to  
7 ComEd's data requests Nos. 1.02 through 1.09.

8 JUDGE SAINSOT: And these all, for the record,  
9 is ComEd Group Exhibit 1.

10 (Whereupon, ComEd Group Exhibit  
11 No. 1 was admitted into  
12 evidence.)

13 JUDGE SAINSOT: Whose next?

14 MR. WEXLER: Your Honor, Alex Weschler --

15 JUDGE SAINSOT: Hold on let's get Mr. Reddick  
16 out of the way before you start yours.

17 JUDGE SAINSOT: Where is he? Just because this  
18 is routine. I take it there is nobody else?

19 MR. WEXLER: Your Honor, I'm putting in a  
20 stipulated exhibit as well for data responses. This  
21 isn't a motion.

22 JUDGE SAINSOT: So we're not worried about this

1 big thing here?

2 MR. WEXLER: We will be as soon as we are done  
3 with this process, but right now we're not. JUDGE  
4 SAINSOT: Ms. Fonner.

5 MS. FONNER: We have CNE Group Cross-Exhibit 1,  
6 which are the responses to requests CES 1.1, 1.2 and  
7 1.5 stipulated by the Commonwealth Edison Company.

8 CNE Cross-Exhibit 2 is a stipulation  
9 with the Natural Resources Defense Council.

10 CNE Cross-Exhibit 3 is a stipulation  
11 with Citizens Utility Board. And CNE Cross-Exhibit 4  
12 is a stipulation with the Environmental Law and  
13 Policy Center similar to the Ameren docket.

14 These go to the witness' testimony  
15 related to the state advisory process in 07-0540.

16 (Whereupon, CNE Cross-Exhibit  
17 Nos. 1, 2 and 3 was admitted  
18 into evidence.)

19 JUDGE SAINSOT: You've got something routine?

20 MR. WEXLER: I do.

21 Pursuant to a stipulation with  
22 Commonwealth Edison, NRDC would like to submit NRDC



1 Cross-Exhibit 1.0, which is Commonwealth Edison  
2 responses to NRDC Data Requests 1-1, 1-2, 1-3, 1-4,  
3 1-6, 1-7, 1-9, 1-10 and 1-11.

4 JUDGE SAINSOT: Okay. Thank you.

5 (Whereupon, NRDC Cross Exhibit  
6 No. 1.0 was admitted into  
7 evidence.)

8 MR. KELTER: Does anybody have anything else  
9 after Mr. Reddick is finished and Mr. Weschler's  
10 motion?

11 MS. HEDMAN: I do have a question will the  
12 court reporter be posting on e-docket as cross  
13 exhibits --

14 JUDGE SAINSOT: Pardon me?

15 MS. HEDMAN: Will these items be posted  
16 on e-docket? Typically, the court reporter will post  
17 all of our cross-exhibits on e-docket. These are  
18 similar to cross-exhibits.

19 The question is whether or not since  
20 they are being admitted into evidence and part of the  
21 record whether or who is going to put them on  
22 e-docket?

1 JUDGE SAINSOT: That's my job.

2 MS. HEDMAN: You're doing that?

3 JUDGE SAINSOT: Right. And it's not only the  
4 cross-exhibits. It's everything.

5 MS. HEDMAN: Thank you. That makes our life  
6 easier.

7 MR. WEXLER: Your Honor, do you want to hear  
8 argument on the motion now and give Mr. Reddick a bit  
9 more time?

10 JUDGE SAINSOT: I think that's an excellent  
11 proposition.

12 MR. WEXLER: Let me try this one more time.

13 I think there are really two pertinent  
14 issues at play in our motion to admit in our DC  
15 Exhibit 2.0.

16 The second issue is whether or not  
17 this was raised by Commonwealth Edison, that document  
18 somehow constitutes a permissible hearsay.

19 I'll get to that in a second.

20 The first issue is whether or not  
21 Commonwealth Edison stipulated responses prepared by  
22 their witness, Mr. Hall, to NRDC cross-exhibit --

1 NRDC Cross-Exhibit 1.0, which has just been admitted.  
2 I'm talking about Request No. NRDC 1-3, which is  
3 found on the third page of that exhibit, plus the  
4 fact that this document is government-sponsored  
5 survey, publicly available study -- excuse me --  
6 publicly available on the web site of a sister  
7 Commerce Commerce is sufficient to allow it into  
8 evidence in this case.

9 If I could read to, your Honor, very  
10 briefly the questions we posed and the answers  
11 Mr. Hall provided: "Question B:

12 "Is Mr. Hall familiar with the  
13 study prepared by ITRON, titled 2004/2005  
14 statewide residential retrofit  
15 single-family energy efficiency rebate  
16 evaluation, dated October 2, 2007  
17 available at..."

18 There is a live web link.

19 "Answer: Yes.

20 "Question: Does Mr. Hall believe  
21 the results of this study, of the ITRON  
22 study will be used to modify the savings

1           values for CFLs in DEER?"

2           MR. PABIAN: Mr. Weschler, you want me to read

3           the complete answers?

4           MR. WEXLER: You want me to read your

5           objections?

6           MR. PABIAN: I want you to read the complete

7           answers.

8           MR. WEXLER: "Without waiving the objection,

9           ComEd states as follows: Yes. All right."

10          You want me to read: "ComEd objects to this

11          request on the basis that it seeks information that

12          is neither relevant nor reasonably calculated to lead

13          to the discovery of admissible evidence without

14          waiving this objection, which you just did.

15          MR. LYON: We don't believe we waived our

16          objections.

17          MR. WEXLER: Then I would like to cross-examine

18          Mr. Hall. If you don't believe that you waived your

19          objections to the answer "yes."

20          MR. LYON: No, we do not waive our objections

21          to the answer. By giving the answer "yes," we are

22          not waiving the other objections to the question.

1                   The answer "yes" stands on its own.

2                   Yes, Mr. Hall is familiar with the  
3   report. But that does not waive our objections that  
4   the report is not relevant, which is why we want you  
5   to read the whole answer because it raises -- I mean  
6   it's relevant to the argument that we're making  
7   whether the report shouldn't be admitted.

8           MR. WEXLER: Your Honor, I will happily  
9   stipulate that when I read Mr. Hall's responses, I'm  
10 only relying on that response.

11                   Is that okay?

12           MR. LYON: Okay.

13           MR. WEXLER: "Are you aware of the study? Yes."

14                   "Does Mr. Hall believe that the  
15   results of the ITRON study will be used to  
16   modify the savings values or CFLs in DEER  
17   during the next year update?

18                   "Answer: Mr. Hall believes the study  
19   referenced in Subpart B of this request may  
20   be used in DEER as one of the information  
21   sources for any modifications of the  
22   saving values for CFLs in DEER."

1                   "Question: Does Mr. Hall believe  
2                   that ComEd should use DEEMED CFL saving  
3                   values consistent with the ITRON study?

4                   "Answer: No.

5                   "Question: If the answer to C  
6                   is no, why not?

7                   "Answer: --"

8                   JUDGE SAINSOT: Where you going with this,  
9                   Counsel?

10                  MR. WEXLER: Where I'm going, your Honor, is I  
11                  believe that these answers and responses in  
12                  combination with the publicly available and  
13                  governmental nature of this report is more than  
14                  adequate to establish its genuineness and  
15                  authenticity.

16                  And if I asked Mr. Hall these  
17                  questions on cross, and this is a cross-exhibit, and  
18                  he had given those answers, I would have then moved  
19                  this exhibit into evidence.

20                  Now, I'm happy to talk about whether  
21                  or not the exhibit is hearsay or it's relevant.

22                  JUDGE SAINSOT: Exactly. Exactly. And then

1 counsel would have had the opportunity to do redirect  
2 or otherwise resuscitate, whatever that word is, his  
3 witness. Exactly.

4 The trouble is that's not what  
5 happened here.

6 MR. WEXLER: Your Honor, as Mr. Pabian said at  
7 the beginning of this hearing when we were off the  
8 record, these responses were submitted in lieu of  
9 cross and on waiver of cross.

10 And as the Attorney General has  
11 correctly noted, they are in effect cross-exhibits. I  
12 believe they should be treated as cross-exhibit  
13 questions and answers.

14 If Commonwealth Edison was not happy  
15 with that arrangement, then they should not have  
16 entered into the stipulation and we would have  
17 happily cross-examined him.

18 MR. PABIAN: Wait a minute.

19 The stipulation was to the admission  
20 of the answers, but we didn't stipulate to the  
21 admission of the exhibit. That was the stipulation.

22 MR. WEXLER: The stipulation was, though, that

1 the answers were in lieu of cross-examination; in  
2 other words, they constitute cross-examination.

3 MR. PABIAN: The stipulation was the  
4 consideration of the waiver of cross-examination.

5 JUDGE SAINSOT: I'm sorry. What you submitted  
6 does not constitute cross-examination.

7 It may have some cross features, but  
8 it does not constitute cross-examination.

9 It is not the same thing as  
10 cross-examination.

11 It may chip away, you think, in some  
12 way, but it is not cross-examination.

13 My problem with this is that you could  
14 have just asked him about this.

15 You know, when you have a tome, this  
16 just leaves -- first of all, it leaves a bit of a  
17 free-for-all situation because it allows somebody who  
18 has the time, which may not include anyone in this  
19 room, but to sift through it and pick anything they  
20 want in it, once I admit it into evidence, and use it  
21 anyway they want.

22 And I don't think that's fair to the



1 parties, and I also don't think it's fair to ComEd.

2 If you wanted to use this tome to  
3 shape your position, then the way to do that is with  
4 cross-examination.

5 And, frankly, the questions that you  
6 asked, at least the ones that you read, just are very  
7 basic questions. They aren't questions that would  
8 invoke use of this document. They're just questions  
9 that "do you know this?" "Yeah." "Did you use it?"  
10 "No."

11 They're not questions that would  
12 compel entry of this document into the record in  
13 order to make it clear exactly what it is or  
14 something.

15 MR. WEXLER: Your Honor, of course, I  
16 understand the point you're making.

17 I think to the extent to which you're  
18 saying that the document wasn't properly  
19 authenticated, I would respectfully disagree with  
20 that.

21 I think the fact that it's a  
22 publically available governmental study combined with

1 the witness' familiarity with it --

2 JUDGE SAINSOT: I don't think there is any  
3 question that it's authentic.

4 I don't think there is any question  
5 that it's a tome. You know, this looks very real to  
6 me. It looks like something -- I'm holding it up for  
7 the record.

8 It looks like something a public  
9 utility commission might publish.

10 My problem is that by not introducing  
11 it through a witness, there's no -- it's just wide  
12 out there for anybody's use for any reason at all  
13 that they want.

14 If you introduced it through your  
15 expert or through cross-examination, then it would be  
16 introduced for some theory.

17 But what you have here now in the  
18 sense is the most clear form of hearsay because  
19 you're entering this solely to prove the truth of the  
20 matter asserted therein, and for no other purpose  
21 than to establish a theory.

22 Having said that, I realize that

1 something like this would fall within an exception. I  
2 don't mean to say that this is not something out --  
3 that's outside the hearsay rule, but there's no  
4 purpose for which it is you've assigned it other than  
5 it's a tome on the subject.

6 So your motion is denied, Counsel. I'm  
7 sorry.

8 MR. WEXLER: Thank you, your Honor. JUDGE

9 SAINSOT: Okay. Thanks, everybody.

10 Have a good weekend.

11 (Whereupon, these proceedings  
12 were adjourned.)

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